

Congress of the United States

Washington, DC 20515

September 26, 2023

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

Dear Chair Gensler:

The Securities and Exchange Commission's (SEC) regulatory agenda¹ suggests the Commission will finalize its climate disclosure rule in October 2023, nineteen months after it was first proposed. Given this extended timeline and the approach of the October deadline, we are writing to once again urge you to expeditiously release a final, strong climate disclosure rule that results in detailed disclosure of firms' transition risk and opportunities, including Scope 1, 2, and 3 greenhouse gas (GHG) emissions, details around energy transition plans, and capital expenditures related to the transition.²

Finalizing a rule without these components could create a regulatory greenlight for public companies to disclose misleading GHG and transition plan information that systematically understates their transition risks. In previous correspondence and when you have appeared in front of the Senate Committee on Banking, Housing, and Urban Affairs, we have highlighted the need for emissions disclosures from oil and gas companies in order for investors to

¹ Office of Information and Regulatory Affairs, "Climate Change Disclosure," Spring 2023, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202304&RIN=3235-AM87>.

² In greenhouse gas emissions accounting, emissions are divided into three "scopes." Scope 1 comprises direct emissions from sources owned or controlled by the reporting company. Scope 2 comprises indirect emissions from the generation of purchased energy consumed by the reporting company. Scope 3 comprises all other indirect emissions in the company's value chain. See https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporting-Standard_041613_2.pdf, p. 5. Because Scope 3 is so broad, it is broken down into fifteen categories. See https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporting-Standard_041613_2.pdf, p. 32. Financed emissions are Scope 3, Category 15.

comprehensively understand their financial risk.³ Here, we focus on the need for disclosures on financed emissions from publicly-traded private equity and other financial companies.

SEC has the Legal Authority and the Comment File Supports Inclusion of These Provisions

Legal experts have been absolutely clear on questions of SEC authority to promulgate this rule:⁴ the SEC “has exercised its disclosure authority consistently—and without legislative override—in nearly ninety years....[and] has now done so once more with the Proposal on climate-related disclosure.” Another adds: “there is no doctrine in securities laws generally, or with respect to materiality specifically, that renders a [Scope 3 emissions] mandate beyond the scope of the SEC’s mandate.”⁵

Further, the rulemaking record you received supports the inclusion of these critical provisions around transition risk. For example, of institutional investors with more than \$50 trillion assets under management (AUM) collectively:

- 99% support Scopes 1 and 2 disclosure;
- 97% support Scope 3 disclosure in the same form as the Commission proposed; and
- 95% support disclosure of climate-related targets and goals, if they exist.⁶

Even Blackrock, Vanguard, Wells Fargo, Citigroup, and Bank of America support maintaining Scope 3 emissions in some form in the final regulation.⁷

³ Senator Elizabeth Warren, “At Hearing, Warren Calls on SEC to Stand Up to Fossil Fuel Lobbying and Finalize Strong Climate Disclosure Rule,” press release, September 15, 2022, <https://www.warren.senate.gov/newsroom/press-releases/at-hearing-warren-calls-on-sec-to-stand-up-to-fossil-fuel-lobbying-and-finalize-strong-climate-disclosure-rule>; Senator Elizabeth Warren, “Senators Warren, Whitehouse, Representatives Goldman, Raskin, and 47 Colleagues Urge SEC to Finalize Strong Climate Risk Disclosure Rule, Protect Investors,” press release, March 6, 2023, <https://www.warren.senate.gov/oversight/letters/senators-warren-whitehouse-representatives-goldman-raskin-and-47-colleagues-urge-sec-to-finalize-strong-climate-risk-disclosure-rule-protect-investors>; Politico, “Warren, Whitehouse lead Democrats in pressing Gensler for strong climate rule,” Declan Harty, March 6, 2023, <https://www.politico.com/news/2023/03/06/democrats-press-gensler-climate-rule-00085473>.

⁴ Comment Letter of Securities Law Scholars on the SEC’s Authority to Pursue Climate-Related Disclosure, June 6, 2022, <https://www.sec.gov/comments/s7-10-22/s71022-20130354-297375.pdf>.

⁵ The CLS Blue Sky Blog, “Will It Float?: The Legitimacy of the SEC’s Authority for Climate Risk Disclosures,” James D. Cox, March 29, 2022, <https://clsbluesky.law.columbia.edu/2022/03/29/will-it-float-the-legitimacy-of-the-secs-authority-for-climate-risk-disclosures/>.

⁶ Ceres, “Analysis shows that investors strongly support the SEC’s proposed climate disclosure rule,” Steven M. Rothstein, October 11, 2022, <https://www.ceres.org/news-center/blog/analysis-shows-investors-strongly-support-secs-proposed-climate-disclosure-rule>.

⁷ Comment Letter from BlackRock to the SEC, June 17, 2022, <https://www.sec.gov/comments/s7-10-22/s71022-20132288-302820.pdf>; Comment Letter from Vanguard to the SEC, June 17, 2022, <https://www.sec.gov/comments/s7-10-22/s71022-20132302-302834.pdf>; Comment Letter from Wells Fargo to the SEC, June 17, 2022, <https://www.sec.gov/comments/s7-10-22/s71022-20132255-302781.pdf>; Comment Letter from Citigroup to the SEC, June 17, 2022, <https://www.sec.gov/comments/s7-10-22/s71022-20132291-302823.pdf>; Comment Letter from Bank of America to the SEC, June 17, 2022, <https://www.sec.gov/comments/s7-10-22/s71022-20131805-302241.pdf>.

Inadequate disclosure and greenwashing by financial firms requires immediate attention

Troublingly, recent reports⁸ have found significant inadequacies in financial firms' climate-related disclosures, particularly around financed GHG emissions and emissions reduction commitments, bolstering the case for finalizing the rule as proposed and requiring immediate attention by SEC under the existing 2010 guidance.⁹

It is well known that Scope 3 emissions are central to credible climate-related risk reporting for certain sectors and companies. For example, roughly 88 percent of emissions from the oil and gas sector fall under Scope 3.¹⁰ Scope 3 financed emissions are similarly critical for financial firms—on average, they are more than 700 times larger than the reporting entity's direct emissions according to one study—but many such firms are currently presenting misleading information to investors by failing to report climate risks associated with debt and equity investments.¹¹

In comments submitted to the SEC as part of the rulemaking process, several financial institutions and representatives of investment advisers have expressed strong support for strong climate risk disclosures. As BNP Paribas wrote, “BNP Paribas strongly supports the SEC’s proposed mandatory disclosures for Scope 1, 2, and 3 GHG emissions. Climate related disclosures are needed to allow investors to assess the long-term viability and performance of company business models, therefore influencing enterprise value.”¹² As the Investment Adviser Association wrote, “The proposed presentation of climate-specific financial information would provide useful information in the overall assessment of the registrant – e.g., reporting of expenses associated with climate-related events would allow investors to better understand the overall vulnerability of assets, loss experience, and long-term investment in asset resiliency or adaptation. Investment advisers could use this financial information in projections of impacts in proprietary climate scenarios to project potential losses based on the current vulnerability and opportunities resulting from investment in transition. This financial information, along with management comment and oversight, could provide critical information in these overall assessments.”¹³

⁸ UNITE HERE, “Brookfield Climate Reality Check,” <https://www.brookfieldclimaterealitycheck.org/>; Private Equity Climate Risks, “The Carlyle Group’s Hidden Climate Impact,” April 2023, <https://www.peclimaterisks.org/the-carlyle-groups-hidden-climate-impact/>; Banking on Climate Chaos, “Fossil Fuel Finance Report 2023,” <https://www.bankingonclimatechaos.org/>.

⁹ Securities and Exchange Commission, “Commission Guidance Regarding Disclosure Related to Climate Change,” February 8, 2010, <https://www.sec.gov/files/rules/interp/2010/33-9106.pdf>.

¹⁰ Center for American Progress, “Why Companies Should Be Required To Disclose Their Scope 3 Emissions,” Alexandra Thornton, December 13, 2021, <https://www.americanprogress.org/article/why-companies-should-be-required-to-disclose-their-scope-3-emissions/>.

¹¹ CDP, “The Time to Green Finance: CDP Financial Services Disclosure Report 2020,” 2020, <https://www.cdp.net/en/research/global-reports/financial-services-disclosure-report-2020>.

¹² Letter from Jean-Yves Fillion, CEO of BNP and Chairman of CIB Americans, submitted to the U.S. Securities and Exchange Commission, June 16, 2022, <https://www.sec.gov/comments/s7-10-22/s71022-20131610-301983.pdf>.

These disclosures are critical, as publicly-traded private equity firms appear particularly prone to understating their GHG emissions and presenting misleading climate-related claims to investors. For example, Brookfield Renewable Partners L.P. (“Brookfield Renewable”) is a Bermuda-based limited partnership traded on the New York and Toronto stock exchanges and an affiliate of Brookfield Asset Management, one of the world’s largest alternative asset managers. Brookfield Renewable describes itself as “one of the world’s largest publicly traded, pure-play renewable power platforms.”¹⁴

According to its 2022 Form 20-F, “Brookfield Renewable participates with institutional partners Brookfield Americas Infrastructure Fund, Brookfield Infrastructure Fund II, Brookfield Infrastructure Fund III, [and] Brookfield Infrastructure Fund IV.”¹⁵ For example, of \$20 billion raised for Brookfield Infrastructure Fund IV, \$5 billion were provided by Brookfield Renewable and another of Brookfield’s “perpetual affiliates,” Brookfield Infrastructure.¹⁶

All four of these infrastructure funds have investments in fossil fuel infrastructure. In particular, an affiliate of Brookfield Infrastructure Fund IV acquired the pipeline operator Inter Pipeline in 2021.¹⁷ Inter Pipeline is Canada’s fourth largest oil and gas pipeline operator and operates in the Alberta oil sands.¹⁸ Although Brookfield Renewable’s Form 20-F mentions its relationship with these funds, it does not disclose Brookfield Renewable’s exposure to investments in fossil fuel infrastructure. An investor who chooses to invest in Brookfield Renewable after seeing it on lists of top green energy stocks¹⁹ or in the iShares Global Clean Energy ETF index²⁰ might not know

¹³ Letter from Gail C. Bernstein, General Counsel, IAA, and William A. Nelson, Associate General Counsel, IAA, submitted to the U.S. Securities and Exchange Commission, June 17, 2022, <https://www.sec.gov/comments/s7-10-22/s71022-20132612-303149.pdf>.

¹⁴ Brookfield Renewable Partners, “FORM 20-F,” p. 57, <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001533232/000153323223000009/bep-20221231.htm>.

¹⁵ Brookfield Renewable Partners, “FORM 20-F,” p. 106, <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001533232/000153323223000009/bep-20221231.htm>.

¹⁶ Infrastructure Investor, “BIF IV closes at \$20bn becoming Brookfield’s largest fund ever,” February 7, 2020, <https://www.infrastructureinvestor.com/bif-iv-closes-at-20bn-becoming-brookfields-largest-fund-ever/>.

¹⁷ Inter Pipeline, “Notice of Special Meeting of Shareholders to be held October 28, 2021,” September 22, 2021, <https://static.interpipeline.com/20210922184944/Management-Information-Circular-Sept-22-2021.pdf>.

¹⁸ Inter Pipeline, “Brookfield Infrastructure Closes Strategic Acquisition of Inter Pipeline,” October 28, 2021, <https://interpipeline.com/news-releases/brookfield-infrastructure-closes-strategic-acquisition-of-inter-pipeline/>; Bloomberg, “Brookfield Wins Inter Pipeline Backing for \$6.8 Billion Deal,” Scott Deveau and Robert Tuttle July 27, 2021, <https://www.bloomberg.com/news/articles/2021-07-28/brookfield-wins-inter-pipeline-s-backing-for-6-8-billion-deal#xj4y7vzkg>; Financial Post, “How Inter Pipeline could emerge as a key asset in Brookfield’s budding oil and gas empire,” Geoffrey Morgan, February 12, 2021, <https://financialpost.com/commodities/energy/how-inter-pipeline-could-emerge-as-a-key-asset-in-brookfields-budding-oil-and-gas-empire>; Inter Pipeline, “What We Do,” 2023, <https://interpipeline.com/what-we-do/>.

¹⁹ The Motley Fool, “Investing in Renewable Energy Stocks,” Matthew DiLallo, July 12, 2023, <https://www.fool.com/investing/stock-market/market-sectors/energy/renewable-energy-stocks/>; Forbes, “Top Green Company Stocks For 2023: Companies Committed To Supplying And Using Green Energy,” February 2, 2023, <https://www.forbes.com/sites/qai/2023/02/02/top-green-company-stocks-for-2023-companies-committed-to-supplying-and-using-green-energy>.

that Brookfield Renewable is invested in fossil fuel infrastructure and therefore may be unaware of the associated investment risk.

Another high profile publicly-traded private equity firm whose climate-related claims are likely misleading for investors is The Carlyle Group, which in February 2022 announced its “commitment to achieve net zero greenhouse gas emissions by 2050 or sooner across investments.”²¹ But excluded from this net zero commitment are the substantial emissions associated with Carlyle’s investments in the North American oil and gas sector that are separately managed by an entity called NPG Management.²² Furthermore, Carlyle has failed to substantiate its net zero commitment in SEC filings by disclosing corresponding financed emissions figures or discussion of its strategy to fulfill its net zero commitment.²³

Investors need credible financed emissions data to substantiate these types of claims and build a realistic picture of companies’ risks for accurate valuation of securities, and the SEC must use its existing guidance and authorities to scrutinize these types of omissions and discrepancies. New rules in state and international jurisdictions will require these disclosures, including Scope 3, in some cases both from companies that would be subject to the SEC rule as well as others, such as private companies, that would not.²⁴ The SEC in following its mandate to protect U.S. investors and provide critical information to U.S. investors, should consider within its economic analysis how these developments lower the cost of compliance of the proposed rule.²⁵

²⁰ iShares by BlackRock, “iShares Global Clean Energy ETF,”

<https://www.ishares.com/us/products/239738/ishares-global-clean-energy-etf>.

²¹ Carlyle, “Carlyle Sets Net Zero by 2050 and Near-Term Climate Goals for Meaningful, Immediate Action with a Focus on Real Emissions Reductions,” February 1, 2022, <https://www.carlyle.com/media-room/news-release-archive/carlyle-sets-net-zero-2050-and-near-term-climate-goals>.

²² Carlyle, “The EBITDA of ESG,” June 28, 2023, <https://www.carlyle.com/sites/default/files/2023-06/Carlyle-ESG-Report-2023.pdf>; Carlyle, “FORM 10-K,” p. 9, <https://ir.carlyle.com/static-files/5ed83b0b-d273-438f-a6c1-5130a73b2cec>.

²³ Carlyle, “FORM 10-K,” <https://ir.carlyle.com/static-files/dcea0020-8c53-49b1-826b-ad8f32e64585>.

²⁴ European Commission, “ANNEX to the Commission Delegated Regulation (EU) .../... supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards,” July 31, 2023, https://ec.europa.eu/finance/docs/level-2-measures/csr-delegated-act-2023-5303-annex-1_en.pdf; IFRS, “IFRS S2 Climate-related Disclosures,” 2023, <https://www.ifrs.org/issued-standards/ifrs-sustainability-standards-navigator/ifrs-s2-climate-related-disclosures.html/content/dam/ifrs/publications/html-standards-issb/english/2023/issued/issbs2/>; Politico, “Newsom says he’ll sign major corporate climate disclosure bill,” Ry Rivard, September 17, 2023, <https://www.politico.com/news/2023/09/17/newsom-corporate-climate-disclosure-bill-00116439>; Wall Street Journal, “New California Climate Law Pulls In Private Companies,” Richard Vanderford, September 21, 2023, <https://www.wsj.com/articles/new-california-climate-law-pulls-in-private-companies-76acfea8>; Politico, “California’s gift to Gensler’s SEC,” Jordan Wolman and Declan Harty, September 26, 2023, <https://www.politico.com/newsletters/the-long-game/2023/09/26/californias-bait-00118127>.

²⁵ Wall Street Journal, “SEC Chair Signals California’s Climate Bill Could Help Clear Path for Agency’s Rule,” Paul Kiernan, September 20, 2023, <https://www.wsj.com/livecoverage/fed-meeting-interest-rate-decision-today-september-2023/card/sec-chair-signals-california-s-climate-bill-could-help-clear-path-for-agency-s-rule-FJa5bVIuKTFAlAp8U0GG>.

Scope 1, 2, and 3 greenhouse gas emissions, details around net-zero transition plans, and capital expenditures made towards the transition must be included in the final rule to fulfill the SEC's mandate of investor protections. And the SEC must vigorously use its existing tools to scrutinize and improve the quality of emissions and transition plan disclosures, including from financial firms.


Sincerely,



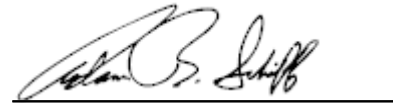
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Jamie Raskin
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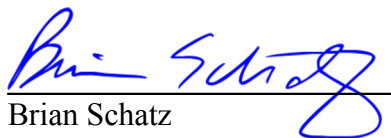
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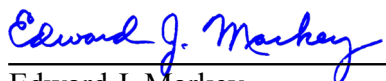
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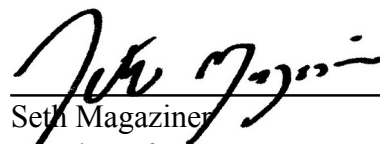
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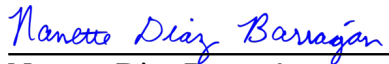
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