

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20529-1090

Re: Public Input on Climate Change Disclosures

Chair Gensler:

Thank you and the Commission for the opportunity to respond to the Commission's request for comment regarding climate change disclosures.

The Data Foundation is a non-profit organization that seeks to improve government and society by using data to inform public policymaking. Our Data Coalition Initiative operates as America's premier voice on data policy, advocating for responsible policies to make government data high-quality, accessible, and usable. The Data Coalition's members have been strong advocates and supporters adopting data standards, such as those required for effective and efficient disclosures. The Data Coalition Initiative has addressed the subset of the questions put forth by the Commission as were aligned with our mission and our expertise.

#1a: How can the Commission best regulate, monitor, review, and guide climate change disclosures in order to provide more consistent, comparable, and reliable information for investors while also providing greater clarity to registrants as to what is expected of them?

The leadership exercised by the SEC is critical to its market-stabilizing role. The SEC historically adapted to changing financial markets to keep capital markets efficient, free, and fair. Substantive and substantiated investor use of ESG information as material to the allocation of capital (e.g., the substantial increase in the variety and capitalization of ESG-related funds and 'green' bonds) begs the Commission to exercise its authority and continue its leadership reflecting market needs.

Market investors have significant interest in clear, reliable, and comparable ESG data from public and private companies to inform investment and voting decisions. A review of recent SEC annual filings show increasing instances of indirect financial data voluntarily reported, in regards to human capital resources, climate-risk, and ESG, alongside financial data in SEC filings including the 10-K, 10-Q, Proxy Statement and other reports. Accordingly, the boards of these companies are evolving their oversight of climate-risk and ESG data to carry out their fiduciary responsibilities. Examples of evolving board oversight are found in the company's board charters, as well as the realignment of existing board charters to include Climate risk, ESG, and Human Capital Management oversight responsibilities. As recently as May 22, 2021, hedge fund investors influenced the recommendations of the board of elections for ExxonMobil, citing the oil company's sustainability record among financial risk factors serious enough to warrant support from

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shareholders in favor of the recommended changes.¹ An increasing number of voluntary disclosures of financial and indirect financial data provide insight into the weight of market pressure for ESG disclosure. As the call for ESG reporting grows in U.S. and international investment and securities markets, the lack of consistent, comparable, or reliable information permits undefined and fluid measures. Inconsequential reports may be seen as best as an exercise in brand management rather than of material value to the investment community.

We recommend that the first actions of the Commission be confirming both its authority and the necessity of action regarding climate disclosures (as part of the "E" in the disclosure regime of "ESG" i.e., environmental, sustainability, and governance). Specifically:

1. Encourage the materiality of climate disclosures.
2. Acknowledge that the existing umbrella principle that companies are to disclose risks that meet the standards of materiality (i.e., "the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information available."²) in the ESG reporting domain now results in burdens on reporting entities and the investment community. This is evident in the crowded field of ESG standards, bespoke definitions by reporting entities attempting to apply the materiality principle in practice, and overlapping ESG surveys requested of some reporting entities by segments of the investment community.
3. Reaffirm the Commission's commitment to machine-readable data as defined in the OPEN Government Data Act,³ and have a technical standard with sufficient details to automate critical functions for machine-readable data for disclosures necessary for the efficient allocation of capital in markets.
4. Establish a public process for moving from a principles-based reporting standard to one that concludes with prescribed disclosures so that the principle of materiality has specific mechanisms for expressing itself as disclosure data that is consistent, clear, comparable, reliable, and timely.

#1b: Where and how should such disclosures be provided?

Disclosures should be reported as machine-readable digital data, as defined in the OPEN Government Data Act. Machine-readable digital data will optimize data interoperability and maximize data value (as raw data) for analytics and capture.⁴ To facilitate consistent logic and definitions, the SEC should publish a machine-readable version of the reporting data dictionary as a taxonomy or ontology, following established models like the SEC's public company reports, Federal Energy Regulatory Commission

¹ "The fight for the soul - and the future - of ExxonMobil," Steven Mufson, *The Washington Post* (May 22, 2021) <<https://www.washingtonpost.com/climate-environment/2021/05/21/exxon-faces-shareholder-revolt-over-climate-change/>>.

² *TSC Industries, Inc. v. Northway*, 426 U.S. 438, 448-49 (1976).

³ "The term 'machine-readable', when used with respect to data, means data in a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost," *Foundations for Evidence-Based Policymaking Act of 2018: Title II, the OPEN Government Data Act*, II.a.18. <<https://www.congress.gov/115/plaws/publ435/PLAW-115publ435.pdf>>.

⁴ "Understanding Machine-Readability in Modern Data Policy," Dean Ritz, Data Foundation (July 2020). <<https://www.datafoundation.org/understanding-machine-readability-in-modern-data-policy-2020>>.

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(FERC) eForm disclosures, the European Standards Market Authority (ESMA), or that of the Sustainable Accounting Standards Board (SASB) taxonomy.

Automation is a key to scalability and efficiency in the production of reports by reporting entities, their collection and aggregation by regulators, the oversight activities of regulators, and analysis by investors and stakeholders. In general, the Data Coalition recommends the Commission commit to disclosure standards also being expressed as machine-readable data, as noted above, as a taxonomy or ontology, using global, non-proprietary data-encoding standards such as those already adopted by the SEC for public company reporting. These kinds of models facilitate innovation with data because they capture semantic details in a machine-readable form.

Timeliness is another factor affecting the value of data. Reporting on a frequent and regular basis gives data consumers more relevant data to understand when policies and procedures change and track climate-related metrics over time. Just as investment analysts rely on quarterly (and interim) financial data, analysts and decision-makers will be best served with up-to-date ESG data to understand risk and opportunities.

Expanding existing open data practices at the SEC will continue to make prior investments to make disclosures timely, consistent, and of high quality. Continuing existing technical practices, especially the use of non-proprietary global data-encoding standards, also means that existing software tools can be used by reporting entities (e.g., the same ones for quarterly and annual reports), for the analysts at the SEC, and the investor community. Standards thus can mitigate the costs of compliance for new information disclosures. Data interoperability is enhanced by common technical standards, and investments in innovation are easier to rationalize and reuse because of the common technical standards.

#1c: Should any such disclosures be included in annual reports, other periodic filings, or otherwise be furnished?

The SEC already differentiates the content expected in public company quarterly and annual reports, so there is precedent and independence for the Commission to exercise similar discretion for ESG disclosure. As data are submitted in standardized machine-readable digital formats, the SEC should employ auditing capabilities of the data to further support increased frequency if that improves accountability and transparency. The SEC should also adopt the same disclosure controls and procedures in place for existing financial reporting and carry them forward to any new disclosure topics, providing internal governance, accountability, and oversight of data to the regulator and the markets.

#3: What are the advantages and disadvantages of permitting investors, registrants, and other industry participants to develop disclosure standards mutually agreed by them? Should those standards satisfy minimum disclosure requirements established by the Commission?

Letting the observed entities self-regulate their ESG disclosures puts the Commission's duty to facilitate efficient functional financial markets at risk. **The Commission should establish fundamental disclosure requirements with standards that apply to all, and additional industry-specific disclosure requirements that are optimized for the Commission's responsibilities.** Taking into consideration the wide swath of participant groups, others may voluntarily agree to additional disclosures that exceed the standards set by the SEC. In the case of meeting, then exceeding a basic disclosure threshold, such disclosures should be allowed.

Standards developed by industry participants may not be sufficient to meet market needs. Previous trends in disclosure indicate that voluntary disclosure only tends to match regulator requirements, not the broader needs of the market as a whole. While there is a rational disagreement between what investors and oversight bodies wish to know and what the entities wish to disclose, an efficient, functional financial market depends upon reliable and trusted mechanisms of transparency. These mechanisms provide the what, when, and how of information disclosure of financial and indirect financial (e.g., ESG) information. The seizure of financial markets during the global financial crisis of 2008-2009 is living memory of what can happen when the information side of the equation does not match the mechanisms of capital allocation.

The Commission is already aware that domain standards alone will not meet the level of specificity required for technical implementation, especially in the creation of the machine readable version of those standards. Domain standard success is based on material value of the data, and its incorporation into a technical standard. Thus, in addition to domain standards the SEC must also have appropriate structural specificity (which asserts the granularity and details required of the domain standard to ease implementation as a technical standard) so that information can be expressed as high quality, machine-readable data. Sufficient technical standards can also mitigate some of the complexities of “permitting investors, registrants, and other industry participants to develop disclosure standards mutually agreed by them” because they provide simple mechanisms for mapping standards to each other even in situations of only partial overlap.

#5: What are the advantages and disadvantages of rules that incorporate or draw on existing frameworks, such as, for example, those developed by the Task Force on Climate-Related Financial Disclosures (TCFD), the Sustainability Accounting Standards Board (SASB), and the Climate Disclosure Standards Board (CDSB)? Are there any specific frameworks that the Commission should consider? If so, which frameworks and why?

Advantages of the SEC adopting rules that incorporate or draw on existing frameworks include reducing burdens, complexities, confusion, and inaccuracies, as has been observed in other contexts, countries, and policy domains.⁵ Many U.S. companies are required to comply with ESG reporting requirements in other

⁵ Examples listed in the report, *Standard Business Reporting: Open Data to Cut Compliance Costs*, show how Australia's Standard Business Reporting (SBR) program saved the government and businesses an estimated \$1.1 billion in compliance costs for the fiscal year of 2015-2016. *Standard Business Reporting: Open Data to Cut*

countries either as a requirement for operating within the country or as a requirement for their equities to be available for trade within those countries. Similarly, an increasing number of companies have been voluntarily reporting sustainable and environmental metrics in annual reports. Adopting existing global standards, or normalizing multiple frameworks to be fewer in variety and higher in quality (that is, more useful data points) would reduce reporting burden and increase the value of required reports.

Advances in the practice of data cataloging, especially those based on global standards for declaring ontological relationships between standards for related data standards (1) enable those independent actors to innovate with data and relate those innovations in machine-readable way standards established by the Commission, and (2) support data interoperability across disclosure standards.

Towards this end, standards should address capturing not just concluding values but, where practicable, the values that went into calculating the concluding values. For example, a data point that reports a rate of change should also include as data points the values that went into that calculation, and this semantic relationship between these data points also should be made part of the machine readable data standard. This allows for the reported ‘rate’ value to be validated as consistent with the input values when processed through the standard’s formula for calculating the rate. This level of detail requires little of the reporting entity and yet creates confidence in the results, and scalability for the regulator.

Disadvantages become more prominent if frameworks are not flexible enough to communicate meaning across sectors. If frameworks are created as *one-size-fits-all*, then generalisation of information will be diluted, rendering superficial reports that omit crucial data or lack detail.

The Data Coalition recommends that the Commission consider frameworks that produce consistent, comparable, and reliable reports across reporting and regulatory bodies, and are interoperable with international frameworks. A growing body of evidence shows that market investors and business leaders favor clear and comparable metrics and disclosures, like those developed by TCFD, SASB, Global Reporting Initiative (GRI), the United Nations Principles for Responsible Investment (UN-PRI), CDSB, and the International Business Council,⁶ a council associated with the World Economic Forum.

#6: How should any disclosure requirements be updated, improved, augmented, or otherwise changed over time? Should the Commission itself carry out these tasks, or should it adopt or identify criteria for identifying other organization(s) to do so? If the latter, what organization(s) should be responsible for doing so, and what role should the Commission play in governance or funding? Should the Commission designate a climate

Compliance Costs, Hudson Hollister, Joseph Kull, Michael Middleton, and Michal Piechocki, Data Foundation (March 13, 2017) <<https://www.datafoundation.org/standard-business-reporting-2017/>>.

⁶ More than 60 business leaders, representing international companies like Dow, Unilever, Deloitte, Nestle, Sony, BP, IBM, and Salesforce, committed to using Stakeholder Capitalism Metrics, a set of 21 universal, comparable disclosures that are adaptable to industry and region. “Global Business Leaders Support ESG Convergence by Committing to Stakeholder Capitalism Metrics,” Madeleine Hillyer, World Economic Forum (January 26, 2021) <<https://www.weforum.org/press/2021/01/global-business-leaders-support-esg-convergence-by-committing-to-stakeholder-capitalism-metrics-73b5e9f13d>>.

or ESG disclosure standard setter? If so, what should the characteristics of such a standard setter be? Is there an existing climate disclosure standard setter that the Commission should consider?

The standards should be governed through a transparent, non-profit, voluntary consensus body, with SEC expectations/requirements for governance of the resulting standard(s). The SEC should participate in the effort to assure the SEC is prepared for the result and identifies standards that are appropriate for U.S. regulatory reporting. The desire to minimize the reporting burden of entities having to report against multiple standards, and the reality that many expected ESG data points are of global interest/impact, suggest that the SEC defer to a global body is a logical approach to this. For example, U.S.-based publicly-listed corporations operating in the European Union will be required to disclose environmental and social-impact information, complying with the Corporate Sustainability Reporting Directive, which was adopted by the European Commission in April 2021.⁷ **If this path is chosen the Data Coalition recommends the Commission directly engage in these efforts to assure standards meet the mission of the SEC. It is reasonable that the Commission contribute funding to assure the stability and progress of these efforts.**

The success of a machine readable standard, that is, one that supports disclosure as data which is timely, consistent, clear, intelligible, comparable, and accurate, substantially depends upon the framework standard being codified in detail so thorough that its implementation in a machine-readable taxonomy, for example, is without ambiguity. It is very common that in the process of creating a machine-readable taxonomy that ambiguities or disagreements are discovered in the underlying codification. Therefore, the Commission should pay special attention to its expectations and requirements to assure that the entity defining the standard -- whether within the Commission or an independent body -- is qualified and with resources to succeed.

#9 What are the advantages and disadvantages of developing a single set of global standards applicable to companies around the world, including registrants under the Commission's rules, versus multiple standard setters and standards? If there were to be a single standard setter and set of standards, which one should it be? What are the advantages and disadvantages of establishing a minimum global set of standards as a baseline that individual jurisdictions could build on versus a comprehensive set of standards? If there are multiple standard setters, how can standards be aligned to enhance comparability and reliability? What should be the interaction between any global standard and Commission requirements? If the Commission were to endorse or incorporate a global standard, what are the advantages and disadvantages of having mandatory compliance?

High quality standards are a basis for efficiency and predictability. This applies to domain reporting standards (e.g., ESG) and to data standards. Thus, ideally, for the ESG reporting domain there would be a

⁷ "Corporate sustainability reporting," European Commission, <https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en> (accessed June 15, 2021).

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single global standard, authoritatively constructed, sufficient in scope, with structured details eliminating ambiguity in interpretation, and architected to accommodate different points of view (e.g., for aggregation and disaggregation of data; for data interoperability; for analytics). Experience, however, suggests that standards are works in progress, and thus the ‘ideal’ is to accommodate change.

As a model, the financial reporting standards, such as those promulgated by FASB, GASB, and the IFRS, continue to change even after decades of use. In fact it is the use of these standards that drives the change. So too will ESG standards continue to change, evolving with experience. The Commission’s standardization efforts should be (1) to invest in convergence of expertise in order to converge on fewer sets of standards for ESG disclosure, and (2) drive these standards to be sufficiently codified so that their expression as machine-readable taxonomies or ontologies is easily realized.

These two efforts are mutually dependent on each other for success. The use of taxonomies and ontologies as the technical means of making a domain standard machine-readable also allows for a machine-readable mediation of domain standards, enabling stakeholders to realize the full potential of the data by simplifying data aggregation based on semantics rather than syntax. As a complement, the value of a machine-readable domain standard is going to be limited by the quality of the underlying domain standard. If the domain standard is irrelevant (e.g., data points of little interest or ambiguous in meaning) its representation as machine-readable data adds negligible value.

The adoption of these two efforts will assist the convergence of the domain standards, maintain their viability and so increase their value. As convergence develops the Commission will then have better choices as to which components of those standards to adopt knowing that convergence reduces reporting burden. Thus participation in global standards efforts is a means to creating value for reporting entities in the U.S. who also have disclosure obligations in other countries.

The Commission is fortunate that non-proprietary, global technology standards exist to support the existence of a multi-framework (i.e., multiple standards) world some of which already are in use at the SEC. The use of this information as machine-readable data will accelerate the maturation and convergence to a smaller set of increasingly mature ESG domain standards to benefit U.S. financial markets through high-quality machine-readable data to give investors and stakeholders material information.###

ESG metrics and reports are notably directing and redirecting funds from investors, affecting choices made by governing boards and global regulators, but also lack clarity, comparability, and reliability. The Data Coalition appreciates the opportunity to provide feedback and comments to help clarify ESG-related climate disclosures to the SEC. We welcome questions and the opportunity to provide additional feedback. Please contact Ashley Nelle-Davis ([REDACTED]) for additional information or questions about these comments.

Respectfully,

Corinna Turbes
Managing Director, Data Coalition Initiative