Council of Institutional Investors®
The voice of corporate governance

Via Email

May 19, 2022

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number S7-10-22

Dear Madam Secretary:

I write on behalf of the Council of Institutional Investors (CII), a nonprofit, nonpartisan association of U.S. public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management of approximately $4 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families, including public pension funds and defined contribution plans with more than 15 million participants - true "Main Street" investors through their funds. Our associate members include non-U.S. asset owners with about $4 trillion in assets, and a range of asset managers with more than $40 trillion in assets under management.[1]

CII appreciates the opportunity to share our views on the Securities and Exchange Commission's (SEC or Commission) March 21, 2022, Proposed Rule, *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (Proposed Rule).[2] Our comments in response to the Proposed Rule build on the views expressed in our June 11, 2021, letter to SEC Chair Gary Gensler in response to the SEC's March 15, 2021, *Public Input Welcomed on Climate Change Disclosures*[3] (CII June Letter).[4] And those views have as their foundation CII membership-approved policies.

[1] For more information about the Council of Institutional Investors ("CII"), including its board and members, please visit CII's website at http://www.cii.org.
[2] *See* The Enhancement and Standardization of Climate-Related Disclosures for Investors, Securities Act Release No. 11,042, Exchange Act Release No. 94,478, 87 Fed. Reg. 21,334 (Mar. 21, 2022), https://www.federalregister.gov/documents/2022/04/11/2022-06342/the-enhancement-and-standardization-of-climate-related-disclosures-for-investors.
[3] *See* Acting Chair Allison Herren Lee, Public Statement, Public Input Welcome on Climate Change Disclosures (Mar. 15, 2021), https://www.sec.gov/news/public-statement/lee-climate-change-disclosures.
[4] *See* Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to The Honorable Gary Gensler, Chair, U.S. Securities and Exchange Commission (June 11, 2021), https://www.cii.org/files/issues_and_advocacy/correspondence/2021/June%2011%202021%20CII%20Comment%20Letter%20on%20Climate%20Disclosure%20for%20SEC%20(final)%20LN.pdf.

CII Policies

Our comments on the Proposed Rule are derived from our membership-approved policies and statements. Those policies that are particularly relevant to the Proposed Rule include the following:

> **2.7 Board's Role in Strategy and Risk Oversight**: The board has a fiduciary responsibility to oversee company performance and the management of strategy and risks. The CEO is responsible for the development of strategy, in cooperation and consultation with the board, including recognizing and planning for opportunities and risks that impact the company. A core function of the board is to oversee the performance of the CEO to ensure that an optimal strategy is pursued and appropriate risk mitigation policies are adopted and executed. The board should (1) monitor a company's risk management philosophy and risk appetite; (2) understand and ensure risk management practices for the company; (3) regularly review risks in relation to the risk appetite; and (4) evaluate how management responds to the most significant risks.
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> In assessing the company's risk profile, the board should consider company-specific dynamics as well as risks across the industry and any systemic risks. Material risks can stem from many aspects of the business, including, but not limited to, the management of: capital structure, human capital, supply chain relationships, executive compensation, cybersecurity and climate change. While boards organize and divide the risk oversight function in a variety of ways, all directors share ultimate responsibility for effective risk oversight. The board must evaluate the company's strategy, taking account of material risks, and be willing to take corrective action if the CEO's performance in this role is inadequate.
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> Effective board oversight of strategy and risk requires regular, meaningful communication between the board and management, among board members and committees, and between the board and any outside advisers it consults, about the company's material risks and risk management processes. The board should disclose to shareowners, at least annually, sufficient information to enable them to assess whether the board is carrying out its oversight responsibilities effectively.[5]
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> **2.13 Auditor Independence**[6]
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> 2.13a Audit Committee Responsibilities Regarding Independent Auditors: The audit committee should fully exercise its authority to hire, compensate, oversee and, if necessary, terminate the company's independent auditor. In doing so, the committee should take proactive steps to promote auditor independence and audit quality. Even in the absence of egregious reasons, the committee should consider

[5] Council of Institutional Investors, Corporate Governance Policies § 2.7 Board's Role in Strategy and Risk Oversight (updated Mar. 7, 2022), https://www.cii.org/files/03_07_22_corp_gov_policies.pdf.
[6] § 2.13 Auditor Independence.

the appropriateness of periodically changing the auditor, bearing in mind factors that include, but are not limited to:

. . . .

- the experience, expertise and professional skepticism of the audit partner, manager and senior personnel assigned to the audit, and the extent of their involvement in performing the audit

. . . .

- reasons cited by other companies for discontinuing their engagement of the same audit partner and/or auditor

. . . .

Investors are the “customers” and end users of financial statements and disclosures in the public capital markets Both the audit committee and the auditor should recognize this principle.[7]

. . . .

2.13g Disclosure of Reasons Behind Auditor Changes: The audit committee should publicly provide to shareowners a plain-English explanation of the reasons for a change in the company’s external auditors. At a minimum, this disclosure should be contained in the same Securities and Exchange Commission (SEC) filing that companies are required to submit within four days of an auditor change.[8]

Financial Gatekeepers

The Council of Institutional Investors believes financial gatekeepers should be transparent in their methodology and avoid or tightly manage conflicts of interest. Robust oversight and genuine accountability to investors are also imperative. Regulators should remain vigilant and work to close gaps in oversight. Continued reforms are needed to ensure that the pillars of transparency, independence, oversight and accountability are solidly in place.

Auditors . . . and other financial “gatekeepers” play a vital role in ensuring the integrity and stability of the capital markets. They provide investors with timely, critical information they need, but often cannot verify, to make informed investment decisions. With vast access to management and material non-public information, financial gatekeepers have an inordinate impact on public confidence in the markets. They also exert great influence over the ability of corporations to raise capital and the investment options of many institutional investors.

In recent years, the global financial crisis and financial scandals on Wall Street and at operating companies from Enron to Tyco have cast a harsh light on flawed structures and practices of gatekeepers. In many cases, poor disclosure, conflicts

[7] §2.13a Audit Committee Responsibilities Regarding Independent Auditors.
[8] §2.13g Disclosure of Reasons Behind Auditor Changes.

of interest, minimal oversight and lack of accountability helped mislead many market participants into making investment decisions that ultimately yielded huge losses. The crisis of confidence in the markets that followed spurred regulators and lawmakers to scrutinize and rein in gatekeepers.

The Sarbanes-Oxley Act of 2002 and the "global settlement" with Wall Street firms in 2003 bolstered the transparency, independence, oversight and accountability of accounting firms and equity analysts, respectively. For example, accounting firms now are barred from providing many consulting services to companies whose books they audit. . . .

. . . CII welcomes further examination of financial gatekeepers by regulators, lawmakers, academics and others, to determine what changes, including new rules and stronger oversight, are needed.[9]

Statement on Corporate Disclosure of Sustainability Performance

Investors increasingly seek decision-useful, comparable and reliable information about sustainability performance in corporate disclosures in order to better understand how nonfinancial metrics can impact business and profitability. CII believes that independent, private sector standard setters should have the central role in helping companies fill that need. Market participants, non-governmental organizations and governments can aid the success of these standard setters by supporting their independence and long-term viability, attributes of which include: stable and secure funding; deep technical expertise at both the staff and board levels; accountability to investors; open and rigorous due process for the development of new standards; and adequate protection from external interference.

CII encourages companies to disclose standardized metrics established by independent, private sector standard setters along with reporting mandated by applicable securities regulations to better ensure investors have the information they need to make informed investment and proxy voting decisions. CII believes those standards that focus on materiality, and take into account appropriate sector and industry considerations, are more likely to meet investors' needs for useful and comparable information about sustainability performance. CII also believes that over time, companies should obtain external assurance of the sustainability performance information they provide.[10]

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[9] Council of Institutional Investors, Policies on Other Issues, Financial Gatekeepers (adopted Apr. 13, 2010), https://www.cii.org/policies_other_issues#:~:text=Auditors%2C%20financial%20analysts%2C%20credit%20rating,to%20make%20informed%20investment%20decisions.

[10] Statement on Disclosure of Sustainability Performance (adopted Sept. 22, 2020), https://www.cii.org/policies_other_issues#sustainability_disclosure.

Statement on Company Disclosure

In evaluating proposals to expand company disclosure, CII considers the following factors:

- Materiality to investment and voting decisions
- Depth, consistency and reliability of empirical evidence supporting the connection between the disclosure and long-term shareowner value
- Anticipated benefit to investors, net of the cost of collection and reporting
- Prospect of substantially improving transparency, comparability, reliability and accuracy.[11]

Independence of Accounting and Auditing Standard Setters

Audited financial statements including related disclosures are a critical source of information to institutional investors making investment decisions. The efficiency of global markets—and the well-being of the investors who entrust their financial present and future to those markets—depends, in significant part, on the quality, comparability and reliability of the information provided by audited financial statements and disclosures. The quality, comparability and reliability of that information, in turn, depends directly on the quality of the financial reporting standards that: (1) enterprises use to recognize, measure and report their economic activities and events; and (2) auditors use in providing assurance that the preparers' recognition, measurement and disclosures are free of material misstatements or omissions. The result should be timely, transparent and understandable financial reports.

The Council of Institutional Investors has consistently supported the view that the responsibility to promulgate accounting and auditing standards should reside with independent organizations.

CII supports U.S. accounting and auditing standard setters cooperatively working with their international counterparts toward a common goal of high quality standards. This means maintaining a high degree of on-going communication among domestic and international standard setters to produce standards that first and foremost result in high quality financial reports, and secondarily result in consistent financial reporting outcomes. CII continues to be open to a transition to a single global set of high quality standards designed to produce comparable, reliable, timely, transparent and understandable financial information that will meet the needs of institutional investors and other consumers of audited financial reports. However, at this time CII does not support replacing U.S. accounting or auditing standards or standard setters with international standards or standard setters. Notwithstanding CII's current opposition to replacing U.S. standards or standard setters, in light of the globalization of the financial markets and the fact that U.S

[11] Statement on Company Disclosure (adopted Mar. 10, 2020), https://www.cii.org/policies_other_issues#Company_disclosure.

investors invest trillions of dollars in securities of enterprises that report their financial results in some form of international standards, we generally support high quality international accounting and auditing standards. In order to be high quality, accounting and auditing standards must be seen as meeting the needs of the investing public, and the standard setting process must be independent and free from undue influence. Attributes that underpin an effective accounting or auditing standard setter include:

- **Recognition of the Role of Reporting** – A recognition that financial accounting and reporting and the quality of auditing thereof is a public good, necessary to investor confidence in individual enterprises and the global capital markets as a whole;
- **Sufficient Funding** – Resources sufficient to support the standard setting process, including a secure, stable, source of funding that is not dependent on voluntary contributions of those subject to the standards (for international standard setters, such funding may depend on governmental and stakeholder cooperation from multiple jurisdictions, including the United States);
- **Independence and Technical Expertise** – A full-time standard-setting board and staff that are independent from prior employers or similar conflicts and possess the technical expertise necessary to fulfill their important roles;
- **Accountability to Investors** – A clear recognition that investors are the key customer of audited financial reports and, therefore, the primary role of audited financial reports should be to satisfy in a timely manner investors' information needs (this includes having significant, prominent and adequately balanced representation from qualified investors on the standard setter's staff, standard-setting board, oversight board and outside monitoring or advisory groups);
- **Due Process** – A thorough public due process that includes solicitation of investor input on proposals and careful consideration of investor views before issuing proposals or final standards;
- **Adequate Protections** – A structure and process that adequately protects the standard setter's technical decisions and judgments (including the timing of the implementation of standards) from being overridden by government officials or bodies; and
- **Enforcement** – A clear, rigorous and consistent mechanism for enforcement by regulators of the accounting and auditing standards.[12]

Summary of Responses

CII policies and prior public positions, including the CII June Letter, provide the basis for our support of the Proposed Rule. We agree with SEC Chair Gary Gensler that "the SEC has a role to play in terms of bringing some standardization to the conversation happening between issuers and investors . . . ."[13] And the Proposed Rule "would build on that long tradition . . . [by

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[12] Independence of Accounting and Auditing Standard Setters (updated Mar. 1, 2017), https://www.cii.org/policies_other_issues#indep_acct_audit_standards.

[13] Chair Gary Gensler, Speech, "Building Upon a Long Tradition" – Remarks before the Ceres Investor Briefing (Apr. 12, 2022), https://www.sec.gov/news/speech/gensler-remarks-ceres-investor-briefing-041222.

providing] investors with consistent, comparable, and decision-useful information" for their investment and proxy voting decisions.[14]

The following summarizes our responses to the requests for comment raised in the Proposed Rule. Those responses are organized in to three categories of proposed disclosures: (1) climate-related governance, risk, business impacts, targets and goals and other related disclosures; (2) Scope 1, Scope 2 and Scope 3 greenhouse gas (GHG) emissions; and (3) note to audited financial statements providing climate-related metrics and impacts.

<u>Climate-related governance, risk, business impacts, targets and goals and other related disclosures</u>

CII generally supports the Proposed Rule's requirement that a registrant describe the board's oversight of climate-related risks. We believe the proposed disclosure is consistent with CII's policy on the **Board's Role in Strategy and Risk Oversight**. We also believe the proposed disclosure could provide shareholders the information they need to assess whether the board is carrying out its oversight responsibilities effectively.

CII also generally supports the Proposed Rule's requirement that a registrant describe the actual and potential impacts of its material climate-related risks on its strategy, business model and outlook. We agree with the SEC that such information can be important for purposes of making an investment or voting decision about the registrant.

CII also generally supports the Proposed Rule's requirement that a registrant provide a narrative discussion of whether and how any of its identified climate-related risks have affected, or are reasonably likely to affect its consolidated financial statements. The proposed requirement is complementary to the Proposed Rule's related requirement discussed below to add a note to audited financial statements providing climate-related metrics and impacts.

CII also generally supports the Proposed Rule's requirement that a registrant that chooses to provide a scenario analysis disclose the scenarios considered, the parameters, assumptions and analytical choices, and the projected principal financial impacts on the registrant's business strategy under each scenario. We believe the proposed disclosure strikes an appropriate balance among the various positions expressed by commenters by requiring registrants to share any

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[14] *Id.; see* James D. Cox, Will It Float?: The Legitimacy of the SEC's Authority for Climate Risk Disclosures, CLS Blue Sky L. (Mar. 29, 2022), https://clsbluesky.law.columbia.edu/2022/03/29/will-it-float-the-legitimacy-of-the-secs-authority-for-climate-risk-disclosures/ ("There is no doctrine in the securities laws generally, or with respect to materiality specifically, that renders that kind of disclosure mandate beyond the scope of the SEC's mandate."); George S. Georgiev, The SEC's New Proposal on Climate Disclosure: Critiquing the Critics, OBLG (Mar. 29, 2022), https://www.law.ox.ac.uk/business-law-blog/blog/2022/03/secs-new-proposal-climate-disclosure-critiquing-critics ("While we can quibble with certain choices on the margins, the SEC's new Climate Disclosure Proposal is fairly standard on the whole, and well within the traditional parameters of the decades-old securities disclosure regime."); *see generally* The SEC's New Proposal on Climate Disclosure: Critiquing the Critics with Professor George S. Georgiev, Voice Corp. Governance (May 12, 2022), *available at* https://www.cii.org/podcasts (discussing a range of criticisms leveled at the Proposed Rule, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*).

scenario analysis that they are otherwise conducting for their business operations while avoiding imposing a potentially difficult or burdensome requirement on those registrants that have not yet conducted such analysis.

Scope 1, Scope 2 and Scope 3 GHG emissions

CII generally supports the Proposed Rule's requirement that a registrant disclose its total Scope 1 and Scope 2 emissions separately for its most recently completed fiscal year. We generally believe the proposed disclosure provides critical information for many investors who are serious about assessing the climate-related risks and opportunities across their portfolios for investment and proxy voting decisions.

For the same reasons, CII also generally supports the Proposed Rule's requirement that a registrant disclose its Scope 3 emissions for the fiscal year if material. We note that the proposal's materiality qualifier is consistent with our **Statement on Company Disclosure** and **Statement on Corporate Disclosure of Sustainability Performance**. We, however, remain concerned about the challenges that companies will face in calculating and reporting Scope 3 emissions. As a result, and consistent with our **Statement on Company Disclosure**, our support for the proposed disclosure is subject to the Commission adopting all of the following proposed accommodations:

- A transition period;
- A liability safe harbor;
- Limiting the proposed disclosure to value chain emissions that are overall material;
- Not imposing a bright line quantitative threshold for the materiality determination;
- Exempting smaller reporting companies (SRCs); and
- A conditional omission of required information.

CII also generally supports the Proposed Rule's requirement that accelerated filers and large accelerated filers obtain an attestation report covering their Scope 1 and Scope 2 emissions disclosure. Consistent with our **Statement on Corporate Disclosure of Sustainability Performance**, we believe that requiring reasonable assurance following sufficient implementation of processes and controls over the proposed disclosures could result in a higher level of reliability and accuracy of information that is responsive to investors' needs. With that in mind, our support for the proposed attestation requirement is subject to the SEC adopting the proposed three-year transition from limited to reasonable assurance and extending the proposed initial compliance dates by at least one year.

CII also generally supports the Proposed Rule's requirement that the attestation report must be prepared pursuant to standards that are established by a body or group that has followed due process procedures, including the broad distribution of the framework for public comment. CII's policy on **Independence of Accounting and Auditing Standard Setters**, indicates those proposed requirements are attributes relevant to producing higher quality attestation standards.

CII also generally supports the Proposed Rule's requirement that the attestation report be prepared by a provider who, at a minimum, is an expert in GHG emissions by virtue of having significant experience measuring, analyzing reporting or attesting GHG emissions. and who is independent from the registrant and its affiliates. We note that those proposed requirements are generally referenced in CII's policies on **Auditor Independence** or **Financial Gatekeepers**.

<u>Note to audited financial statements providing climate-related metrics and impacts</u>

CII generally supports the Proposed Rule's requirement that registrants disclose climate-related metrics and impacts in a note to the audited financial statements. We also generally support the Proposed Rule's requirement that the registrant provide contextual information describing how each metric was derived.

When combined with the proposed requirement that the registrant provide qualitative information on how climate-related risks have affected the estimates and assumptions used to produce the financial statements, the proposed disclosures are largely responsive to the CII September 2021 letter to the Financial Accounting Standards Board (FASB) (CII September Letter).

The CII September Letter requested that the FASB prioritize modest amendments to several existing generally accepted accounting principles (GAAP) to improve disclosure about climate risk in the financial statement footnotes. We agree with the SEC that the proposed climate-related financial statement metrics should provide additional transparency into the impact of climate-related events on information reported in the financial statements that would be relevant to investors when making investment or voting decisions

The CII September Letter contemplated that our requested financial statement footnote disclosures about climate risk would be subject to a materiality standard. We, therefore, do not support the Proposed Rule's requirement to replace a materiality standard for the proposed note with a "bright-line" 1% threshold. Moreover, as indicated above, our support for the proposed note is also predicated on the SEC extending by at least one year the Proposed Rule's initial compliance dates.

We believe the adoption of our recommended revisions to the Proposed Rule's requirements for the note are consistent with our **Statement on Corporate Disclosure of Sustainability Performance** and **Statement on Company Disclosure**. In our view, those revisions could strike a better balance between the anticipated benefits to investors and the net cost of the collection, reporting and auditing of the proposed note disclosures.

CII Responses to Requests for Comment

More details about CII views on the Proposed Rule in the form of responses to select requests for comment are set forth below. The SEC questions to which we are responding appear in italics.

SEC Request for Comment 1. *Should we add a new subpart to Regulation S–K and a new article to Regulation S–X that would require a registrant to disclose certain climate-related* *information, as proposed? Would including the climate-related disclosure in Regulation S–K and Regulation S–X facilitate the presentation of climate information as part of a registrant's regular business reporting? Should we instead place the climate-related disclosure requirements in a new regulation or report? Are there certain proposed provisions, such as GHG emissions disclosure requirements, that would be more appropriate under Regulation S–X than Regulation S–K?*[15]

CII Response. CII generally supports the Proposed Rule's addition of a new subpart to Regulation S–K[16] and a new article to Regulation S–X[17] that would require a registrant to disclose certain climate-related information. As we noted in the CII June Letter:

> Ideally, companies would integrate their financial accounting and reporting disclosures with their climate-related disclosures "in investor-focused communications, making explicit how performance on one influences the other." [And] . . . there may be a variety of approaches in which this goal could be achieved.[18]

We believe the approach taken in the Proposed Rule achieves our goal of integration of financial accounting and reporting disclosures with their related climate-related disclosures. More specifically, we agree with the SEC that by requiring "a registrant to include climate-related disclosure in Securities Act or Exchange Act registration statements and Exchange Act annual reports in a separately captioned 'Climate-Related Disclosure' section and in the financial statements [the presentation] . . . would facilitate review of the climate-related disclosure by investors alongside other relevant company financial and non-financial information."[19]

SEC Request for Comment 2. *If adopted, how will investors utilize the disclosures contemplated in this release to assess climate-related risks? How will investors use the information to assess the physical effects and related financial impacts from climate-related events? How will investors use the information to assess risks associated with a transition to a lower carbon economy?*[20]

CII Response. CII generally believes that, if adopted, the disclosures contemplated by the Proposed Rule would better ensure that investors of all sizes and strategies have low-cost access to more consistent and accurate climate-related information that they can factor into their investment or proxy voting decisions. We agree with SEC Chair Gary Gensler's recent comments that the information from the proposed disclosures "could influence shareholders' . . . investment decisions to buy or sell a security and how to vote on a merger or other proxy vote."[21]

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[15] 87 Fed. Reg. at 21,348 (emphasis added).
[16] *See id.* at 21,465-71 (proposed Part 229 to Regulation S-K).
[17] *See id.* at 21,464-65 (proposed Part 210 to Regulation S-X).
[18] Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to The Honorable Gary Gensler, Chair, U.S. Securities and Exchange Commission at 12 (footnote omitted).
[19] 87 Fed. Reg. at 21,348.
[20] *Id.* at 21,348 (emphasis added).
[21] Chair Gary Gensler, Speech, "Building Upon a Long Tradition" – Remarks before the Ceres Investor Briefing; *see, e.g.,* Press Release, U.S. Department of Treasury, Remarks by Climate Counselor John Morton at the MSCI

More specifically, we agree with the SEC that the Proposed Rule's disclosure regarding climate-related risks and their impact on a registrant's strategy, business model and outlook could be utilized by investors to:

- "[I]mprove [their] . . . understanding of what the registrant considers to be the relevant short-, medium-, and long-term climate-related risks that are reasonably likely to have a material impact on its business, taking into consideration the useful life of the organization's assets or infrastructure and the fact that climate-related risks may manifest themselves over the medium and longer terms[;]"[22]
- "[B]etter [enable them] . . . to identify and assess how climate-related risks may affect a registrant's businesses, strategy, and financial planning in several areas, including products and services, supply chain and/or value chain, adaptation and mitigation activities, investment in research and development, operations (including types of operations and location of facilities), acquisitions or divestments, and access to capital[;][23]
- "[G]ain insight into how climate-related risks may serve as an input to the registrant's financial planning process and the time period(s) used for this process[;]"[24]
- "[A]ssess how climate-related issues may impact the registrant's financial performance (e.g., revenues, costs) and financial condition (e.g., assets, liabilities)[; and]"[25]
- "[G]ain valuable insights on how resources are being used by management to mitigate climate-related risks and to facilitate investors' evaluation of whether managers are taking appropriate steps to address such risks."[26]

SEC Request for Comment 3. *Should we model the Commission's climate-related disclosure framework in part on the framework recommended by the TCFD, as proposed? Would alignment with the TCFD help elicit climate-related disclosures that are consistent, comparable, and reliable for investors? Would alignment with the TCFD framework help mitigate the reporting burden for issuers and facilitate understanding of climate-related information by investors because the framework is widely used by companies in the United States and around the world? Are there aspects of the TCFD framework that we should not adopt? Should we instead adopt rules that are based on a different third-party framework? If so, which framework? Should we base the rules on something other than an existing third-party framework?*[27]

Capital for Climate Action Conference on Treasury's Efforts to Promote Transparency and Accountability Around Financial Institutions' Net-Zero Targets (May 17, 2022), https://home.treasury.gov/news/press-releases/jy0790 (referencing the Proposed Rule, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, and commenting that "I think everyone listening in to this conference today believes that information on climate-related risk is going to factor into the investment process for decades to come.").

[22] 87 Fed. Reg. at 21,431.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.* at 21,238 (emphasis added).

CII Response. CII generally supports the Proposed Rule's modelling the Commission's climate-related disclosure framework in part on the framework recommended by the Task Force on Climate-Related Financial Disclosures (TCFD). As we discussed in the CII June Letter:

> We believe that . . . the Commission should consider . . . the framework developed by Task Force on Climate-Related Financial Disclosures (TCFD). We note that the group of seven countries' finance ministers recently communicated the view that 87 mandatory climate disclosures should be made according to the TCFD. And the TCFD framework is currently supported by more than 1,000 global organizations making it "the de facto reporting standard for climate related risks."[28]

More recently, in describing the TCFD framework, SEC Chair Gensler stated that "many countries already have started to develop reporting regimes that build on or incorporate the TCFD framework, too, including Brazil, the European Union, Hong Kong, Japan, New Zealand, Singapore, Switzerland, and the United Kingdom."[29] And, in the same speech, Chair Gensler stated that by building upon on the TCFD framework, the Proposed Rule can bring greater "consistency and comparability to how a management team discloses a company's strategy, governance, and risk management with respect to climate-related risks."[30]

We agree with the SEC that the Proposed Rule's alignment with the TCFD could have at least three potential benefits: (1) it may improve the consistency, comparability and reliability of the proposed disclosures;[31] (2) it may help mitigate the reporting burden for issuers;[32] and (3) it may facilitate the understanding of climate-related information by investors.[33]

SEC Request for Comment 4. *Do our current reporting requirements yield adequate and sufficient information regarding climate-related risks to allow investors to make informed decisions? In lieu of, or in addition to the proposed amendments, should we provide updated guidance on how our existing rules may elicit better disclosure about climate-related risks?*[34]

CII Response. CII generally believes that the SEC's current reporting requirements do not yield adequate and sufficient information regarding climate-related risks to allow investors to make informed decisions. As we explained in the CII June Letter:

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[28] Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to The Honorable Gary Gensler, Chair, U.S. Securities and Exchange Commission at 10-11 (footnotes omitted).
[29] Chair Gary Gensler, Speech, "Building Upon a Long Tradition" – Remarks before the Ceres Investor Briefing.
[30] *Id.*
[31] *See* 87 Fed. Reg. at 21,347 ("Basing the Commission's climate-related disclosure rules on a globally recognized framework should help elicit climate related disclosures that are consistent, comparable, and reliable while also limiting the compliance burden for registrants that are already providing climate-related disclosures based on this framework.").
[32] *See id.*
[33] *See id.* at 21,346 ("Building on the TCFD framework should enable companies to leverage the framework with which many investors and issuers are already familiar, which should help to mitigate both the compliance burden for issuers and any burdens faced by investors in analyzing and comparing the new proposed disclosures.").
[34] *Id.* at 21,348 (emphasis added).

> "Since 2010, investor demand for, and company disclosure of information about, climate change risks, impacts, and opportunities has grown dramatically."
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> CII generally believes that climate change is a critical systemic risk that long-term institutional investors must address as part of their fiduciary duty. Many institutional investors are attempting "to assess climate risk and impact but are finding it difficult . . . ." And we believe that current inadequacies of existing disclosures about climate change by companies can lead to mispricing of assets and a misallocation of investment capital.
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> We are pleased with your recent . . . statements that you plan to propose rules on climate change disclosure this year and, more importantly, that the purpose of the rulemaking is to bring some consistency and comparability to those disclosures for investors.[35]

SEC Request for Comment 5. *Should we require a registrant to present the climate-related disclosure in an appropriately captioned, separate part of the registration statement or annual report, as proposed? Should this disclosure instead be presented as part of the registrant's MD&A?*[36]

CII Response. CII generally supports the Proposed Rule's requirement that a registrant present the climate-related disclosure in an appropriately captioned, separate part of the registration statement or annual report.[37] See **CII Response** to **SEC Request for Comment 1**.

SEC Request for Comment 19. *Should we require a registrant to describe the actual and potential impacts of its material climate-related risks on its strategy, business model, and outlook, as proposed? Should we require a registrant to disclose impacts from climate-related risks on, or any resulting significant changes made to, its business operations, including the types and locations of its operations, as proposed?*[38]

CII Response. CII generally supports the Proposed Rule's requirement that a registrant describe the actual and potential impacts of its material climate-related risks on its strategy, business model, and outlook.[39] We agree with those commentators that have stated that "that many registrants have included largely boilerplate discussions about climate-related risks and failed to provide a meaningful analysis of the impacts of those risks on their businesses."[40] And we agree with the SEC that "information about how climate-related risks have impacted or are likely to impact a registrant's strategy, business model, and outlook can be important for purposes of making an investment or voting decision about the registrant . . . ."[41]

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[35] Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to The Honorable Gary Gensler, Chair, U.S. Securities and Exchange Commission at 1-2 (footnotes omitted).
[36] 87 Fed. Reg. at 21,348 (emphasis added).
[37] *See id.* at 21,465-71 (proposed Subpart 229.1500).
[38] *Id.* at 21,357 (emphasis added).
[39] *See id.* at 21,467 (proposed Item 1502).
[40] *Id.* at 21,353
[41] *Id.* at 21,353-54.

SEC Request for Comment 25. *Should we require a registrant to provide a narrative discussion of whether and how any of its identified climate-related risks have affected or are reasonably likely to affect its consolidated financial statements, as proposed? Should the discussion include any of the financial statement metrics in proposed 17 CFR 210.14–02 (14–02 of Regulation S–X) that demonstrate that the identified climate-related risks have had a material impact on reported operations, as proposed? Should the discussion include a tabular representation of such metrics?*[42]

CII Response. CII generally supports the Proposed Rule's requirement that a registrant provide a narrative discussion of whether and how any of its identified climate-related risks have affected or are reasonably likely to affect, its consolidated financial statements.[43] We also support the Proposed Rule's related requirement that the discussion include any of the financial statement metrics required by the Proposed Rule that demonstrate that the identified climate-related risks have had a material impact on reported operations.[44]

As indicated in CII's **Statement on Corporate Disclosure of Sustainability Performance**, we generally support corporate reporting of standardized metrics about sustainability performance "established by independent, private sector standard setters along with reporting mandated by applicable securities regulations to better ensure investors have the information they need to make informed investment and proxy voting decisions."[45]

We note that, consistent with that statement, the CII September Letter in response to the FASB's 2021 Invitation to Comment, Agenda Consultation,[46] stated:

> CII believes that climate change is a systemic risk, so it is critical that investors can access clear disclosures of the risks it poses to long-term value creation by the companies in which they invest. We also believe that ensuring that climate risk is properly disclosed is vital to maintaining our efficient and vibrant capital markets and to the long-term success of investors as well as issuers.
>
> CII agrees with the feedback received by the Board that "there is inadequate information currently being disclosed on climate risk and when climate risk would have a material effect on an impairment analysis, fair value calculation, or estimate of expected credit losses." We believe "the current inadequacies of existing disclosures about climate change by companies can lead to mispricing of assets and a misallocation of investment capital."
>
> We note that the FASB staff has specifically identified six disclosures required under existing U.S. generally accepted accounting principles (GAAP) which could be amended by the Board to improve the information disclosed on climate risk. As

[42] *Id.* at 21,354 (emphasis added).
[43] *See id.* at 21,467 (proposed Item 1502(d)).
[44] *See id.*
[45] Statement on Disclosure of Sustainability Performance.
[46] *See* FASB Invitation to Comment, Agenda Consultation (June 24, 2021), https://asc.fasb.org/imageRoot/57/126820457.pdf.

> you are aware, those areas include the disclosures required by: (1) Subtopic 205-40, Presentation of Financial Statements—Going Concern; (2) Topic 275, Risks and Uncertainties; (3) Subtopic 350-20, Intangibles—Goodwill and Other—Goodwill; (4) Subtopic 350-30, Intangibles—Goodwill and Other—General Intangibles Other than Goodwill; (5) Subtopic 410-20, Asset Retirement and Environmental Obligations—Asset Retirement Obligations; and (6) Subtopic 410-30, Asset Retirement and Environmental Obligations—Environmental Obligations. We believe prioritizing amending those required GAAP disclosures would improve the information about climate risk and help investors better evaluate potential return on investment and make more informed comparisons among investment opportunities.[47]

CII also agrees with those "many commenters [that] recommended that [the SEC] . . . require registrants to discuss and analyze their quantitative climate data in a manner similar to that required for MD&A."[48] And we agree with the SEC's analysis that the Proposed Rule is responsive to that recommendation by providing "climate-related disclosure that is similar to MD&A [and we note that under the proposal] . . . a registrant [may choose to] . . . provide such disclosure as part of its MD&A."[49]

SEC Request for Comment 30. *Should we require a registrant to disclose analytical tools, such as scenario analysis, that it uses to assess the impact of climate-related risks on its business and consolidated financial statements, and to support the resilience of its strategy and business model, as proposed? What other analytical tools do registrants use for these purposes, and should we require disclosure of these other tools? Are there other situations in which some registrants should be required to conduct and provide disclosure of scenario analysis? Alternatively, should we require all registrants to provide scenario analysis disclosure? If a registrant does provide scenario analysis disclosure, should we require it to follow certain publicly available scenario models, such as those published by the IPCC, the IEA, or NGFS and, if so, which scenarios? Should we require a registrant providing scenario analysis disclosure to include the scenarios considered (e.g., an increase of global temperature of no greater than 3°, 2°, or 1.5 °C above preindustrial levels), the parameters, assumptions, and analytical choices, and the projected principal financial impacts on the registrant's business strategy under each scenario, as proposed? Are there any other aspects of scenario analysis that we should require*

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[47] Letter from Jeffrey P. Mahoney, General Counsel of Institutional to Hillary H. Salo, Technical Director, File Reference No. 2021-004, FASB 5-6 (Sept. 16, 2021), https://www.cii.org/files/issues_and_advocacy/correspondence/2021/September%2016%202021%20%20Fasb%20Agenda%20Consultation%20(final)-AB%20(003).pdf (footnotes omitted); *cf.* Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to International Accounting Standards Board 9 (Sept. 27, 2021), https://www.cii.org/files/issues_and_advocacy/correspondence/2021/September%2027%20IASB%20Agenda%20Consultation%20(final)-AB.pdf ("A more modest approach that we expect would be a much smaller potential project requiring fewer Board resources would be to simply propose amendments to the existing disclosure requirements of IAS 1 and IAS 36 to explicitly require information about climate risk [and] [w]e believe prioritizing this potential project either alone or in combination with either or both of the larger projects identified by the Board would improve the information about climate risk and help investors better evaluate potential return on investment and make more informed comparisons among investment opportunities.").

[48] 87 Fed. Reg. at 21,354.

[49] *Id.*

registrants to disclose? For example, should we require a registrant using scenario analysis to consider a scenario that assumes a disorderly transition? Is there a need for us to provide additional guidance regarding scenario analysis? Are there any aspects of scenario analysis in our proposed required disclosure that we should exclude? Should we also require a registrant that does not use scenario analysis to disclose that it has not used this analytical tool? Should we also require a registrant to disclose its reasons for not using scenario analysis? Will requiring disclosure of scenario analysis if and when a registrant performs scenario analysis discourage registrants from conducting scenario analysis? If so, and to the extent scenario analysis is a useful tool for building strategic resilience, how could our regulations prevent such consequences?[50]

CII Response. CII generally supports the Proposed Rule's requirement that a registrant providing scenario analysis disclosure include the scenarios considered, the parameters, assumptions and analytical choices, and the projected principal financial impacts on the registrant's business strategy under each scenario.[51] We agree with the SEC "that not every registrant conducts scenario analysis and that, in certain instances, it may be costly or difficult for some registrants to conduct such scenario analysis."[52] As a result, and consistent with our **Statement on Company Disclosure**, we agree with the SEC that the Proposed Rule's requirement "strikes an appropriate balance between the various positions expressed by commenters by requiring registrants to share any scenario analysis that they are otherwise conducting for their business operations while avoiding imposing a potentially difficult or burdensome requirement on those registrants that have not yet undertaken to conduct such analysis."[53]

SEC Request for Comment 34. *Should we require a registrant to describe, as applicable, the board's oversight of climate-related risks, as proposed? Should the required disclosure include whether any board member has expertise in climate-related risks and, if so, a description of the nature of the expertise, as proposed? Should we also require a registrant to identify the board members or board committee responsible for the oversight of climate-related risks, as proposed? Do our current rules, which require a registrant to provide the business experience of its board members, elicit adequate disclosure about a board member's or executive officer's expertise relevant to the oversight of climate-related risks?*[54]

CII Response. CII generally supports the Proposed Rule's requirement that a registrant describe the board's oversight of climate-related risks.[55] And more specifically, we support the Proposed Rule's requirement that the disclosure include whether any board member has expertise in climate-related risks and, if so, a description of the nature of the expertise.[56]

[50] *Id.* at 21,358-59 (emphasis added).
[51] *See id.* at 21,468 (proposed Item 1502(f)).
[52] *Id.* at 21,357.
[53] *Id.*
[54] *Id.* at 21,350 (emphasis added).
[55] *See id.* at 21,467 (proposed Item 1501(a)(1)).
[56] *See id.* (proposed Item 1501(a)(1)(ii)).

We believe the Proposed Rule's disclosure requirement that a registrant describe the board's oversight of climate-related risks is consistent with CII's policy on the **Board's Role in Strategy and Risk Oversight**. We note that that policy explicitly references "climate risk" and the need for the board to disclose at least annually to shareowners "sufficient information to enable them to assess whether the board is carrying out its oversight responsibilities effectively."[57] We also note the policy is consistent with the view that "[m]any commenters asserted that climate-related issues should be subject to the same level of board oversight as other financially material matters."[58]

We also believe the Proposed Rule's requirement that the disclosure include whether any board member has expertise in climate-related risks and, if so, a description of the nature of the expertise, is consistent with CII's long-standing support for a similar disclosure regarding cybersecurity risk.[59]

Overall, we generally agree with the SEC that the "proposed disclosure items could provide investors with insight into how a registrant's board considers climate-related risks and any relevant qualifications of board members."[60]

SEC Request for Comment 52. *Should we require a registrant to provide contextual information, including a description of significant inputs and assumptions used, and if applicable, policy decisions made by the registrant to calculate the specified metrics, as proposed? Should we revise the proposed requirement to provide contextual information to require specific information instead? We provide some examples of contextual information disclosure in Sections II.F.2 and II.F.3 below. Would providing additional examples or guidance assist registrants in preparing this disclosure?*[61]

CII Response. CII generally supports the Proposed Rule's requirement that a registrant provide contextual information, including a description of significant inputs and assumptions used, and if applicable, policy decisions made by the registrant to calculate the specified metrics.[62] As we indicated in the ***CII Response*** to ***SEC Request for Comment 25***, we have specifically requested that the FASB prioritize amending GAAP to improve the financial statement footnote information disclosed on climate risk. Unless and until such amendments are forthcoming and implemented, we agree with the SEC that the Proposed Rule could "benefit registrants by specifying when to provide such disclosures."[63]

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[57] § 2.7 Board's Role in Strategy and Risk Oversight.
[58] 87 Fed. Reg. at 21,359.
[59] *See, e.g.,* Letter Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Nicole Puccio, Branch Chief, Securities and Exchange Commission 14 (July 19, 2018) https://www.cii.org/files/July%2019%202018%20SEC%20Strategic%20Plan%20final%20(003).pdf (generally supporting "S. 536 direct[ing] the SEC to issue final rules requiring a registered issuer to: • Disclose in its mandatory annual report or annual proxy statement whether any member of its governing body has expertise or experience in cybersecurity, including details necessary to describe fully the nature of that expertise or experience . . . .").
[60] 87 Fed. Reg. at 21,359.
[61] *Id.* at 21,364 (emphasis added).
[62] *See id.* at 21,464 (proposed § 210.14–02(a)).
[63] *Id.* at 21,363.

We also agree with the SEC that the Proposed Rule's required disclosure to provide contextual information regarding the registrant's calculation of the specified metric is appropriate because the "proposed financial statement metrics disclosures would involve estimation uncertainties that are driven by the application of judgments and assumptions, similar to other financial statement disclosures (e.g., estimated loss contingencies, fair value measurement of certain assets, etc.)."[64]

SEC Request for Comment 59. *Should we require registrants to disclose the financial impact metrics, as proposed? Would presenting climate specific financial information on a separate basis based on climate-related events (severe weather events and other natural conditions and identified physical risks) and transition activities (including identified transition risks) elicit decision-useful or material information for investors? Are there different metrics that would result in disclosure of more useful information about the impact of climate-related risks and climate-related opportunities on the registrant's financial performance and position?*[65]

CII Response. CII generally supports the Proposed Rule's requirement that registrants disclose financial impact metrics.[66] We agree with the SEC that "the proposed climate-related financial statement metrics should provide additional transparency into the impact of climate-related events on information reported in the financial statements that would be relevant to investors when making investment or voting decisions."[67] See ***CII Response*** to ***SEC Request for Comment 25*** and ***CII Response*** to ***SEC Request for Comment 52*****.**

SEC Request for Comment 60. *Would the impact from climate-related events and transition activities yield decision-useful information for investors? Would the climate-related events (including the examples provided) and transition activities result in impacts that are easier to quantify or disaggregate than climate-related risks more generally? Would a registrant be able to quantify and provide the proposed disclosure when the impact may be the result of a mixture of factors (e.g., a factory shutdown due to an employee strike that occurs simultaneously with a severe weather event)? If there are situations where disaggregation would not be practicable, should we require a registrant to disclose that it was unable to make the required determination and why, or to make a reasonable estimate and provide disclosure about the assumptions and information that resulted in the estimate?*[68]

CII Response. CII generally believes the Proposed Rule's disclosure of the impact from climate-related events and transition activities could yield decision-useful information for investors.[69] As indicated in CII's **Statement on Corporate Disclosure of Sustainability Performance**, we believe "[i]nvestors increasingly seek decision-useful, comparable and reliable information about sustainability performance in corporate disclosures in order to better understand how nonfinancial metrics can impact business and profitability."[70] Consistent with that policy, we agree with the SEC that "separately stating the financial statement impacts from the climate-

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[64] *Id.* at 21,363.
[65] *Id.* at 21,368 (emphasis added).
[66] *See id.* at 21,464 (proposed § 210.14–02).
[67] *Id.* at 21,368.
[68] *Id.* (emphasis added).
[69] *See id.* at 21,464-65 (proposed § 210.14–02(c)-(d)).
[70] Statement on Disclosure of Sustainability Performance.

related events and transition activities could improve comparability across both the registrant's year-to-year disclosures and the disclosures of different registrants."[71]

SEC Request for Comment 68. *Instead of including a quantitative threshold, as proposed, should we require disaggregated disclosure of any impact of climate-related risks on a particular line item of the registrant's consolidated financial statements? Alternatively, should we just use a materiality standard?*[72]

CII Response. CII would generally support replacing the Proposed Rule's 1% quantitative threshold with a materiality standard. As indicated, CII's **Statement on Corporate Disclosure of Sustainability Performance** and **Statement on Company Disclosure** both emphasize the concept of materiality.

Our definition of materiality for purposes of those policies is generally consistent with the following definition provided by the SEC in the Proposed Rule:

> As defined by the Commission and consistent with Supreme Court precedent, a matter is material if there is a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities or how to vote. As the Commission has previously indicated, the materiality determination is largely fact specific and one that requires both quantitative and qualitative considerations. Moreover, as the Supreme Court has articulated, the materiality determination with regard to potential future events requires an assessment of both the probability of the event occurring and its potential magnitude, or significance to the registrant.[73]

We are unable to reconcile the definition of materiality in our policies with the Proposed Rule's 1% threshold. And we note that the CII September Letter contemplated that our request for revisions to GAAP related to financial statement footnote disclosures about climate risk would be subject to a materiality standard.[74]

We acknowledge that the proposed 1% threshold "should reduce the risk of underreporting such information [and] . . . could also promote comparability and consistency among a registrant's filings over time and among different registrants compared to a principles-based approach."[75]

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[71] 87 Fed. Reg. at 21,368.
[72] *Id.* at 21,369 (emphasis added).
[73] *Id.* at 21,351 (footnotes omitted); *cf.* Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Vanessa A. Countryman, Secretary, Securities and Exchange Commission 10 (Oct. 17, 2019), https://www.sec.gov/comments/s7-11-19/s71119-6312521-193620.pdf ("In contrast, our preferred definition of 'material' is information in which there is a substantial likelihood that disclosure of the omitted fact would have been viewed by a reasonable investor as having significantly altered the total mix of information available in deciding how to vote or make an investment decision [and] [w]e note that our preferred definition is generally consistent with a definition the SEC included in its 2010 Climate Change Release and for which the Proposed Rule indicates that '[o]n several occasions, the Commission has reiterated.'").
[74] *See* Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Hillary H. Salo, Technical Director, File Reference No. 2021-004, FASB at 6 & n.22.
[75] 87 Fed. Reg. at 21,366.

We, however, observe that SEC Staff Accounting Bulletin: No. 99 – Materiality states that "[e]valuation of materiality requires a registrant and its auditor to consider *all* the relevant circumstances, and the staff believes that there are numerous circumstances in which misstatements below 5% could well be material."[76]

In our view, the SEC has failed to provide sufficient circumstances to justify a 1% threshold for the proposed note.[77] On balance, we believe that consistent with our **Statement on Company Disclosure** a materiality qualifier could strike a better balance between the anticipated benefits to investors, and the cost of collection, reporting, and auditing of the proposed note disclosures.[78]

SEC Request for Comment 81. *Should we require disclosure of financial estimates and assumptions impacted by the climate-related events and transition activities (including disclosed targets), as proposed? How would investors use this information?*[79]

CII Response. CII supports the Proposed Rule requiring disclosure of financial estimates and assumptions impacted by the climate-related events and transition activities.[80] When combined with the proposed disclosure of physical and transition risks, and subject to our preferred materiality standard rather than the 1% threshold, the proposed disclosures are largely responsive to CII's request to the FASB described in CII September Letter. See ***CII Response*** to ***SEC Request for Comment 25*** and ***CII Response*** to ***SEC Request for Comment 52***.

We generally agree with the SEC that the proposed required disclosure of financial estimates and assumptions:

> [C]ould provide decision-useful information and transparency to investors about the impact of the climate-related events and transition activities, including disclosed targets and goals, on such estimates and assumptions. Moreover, in addition to providing insight into impacts on the registrant's financial statements, such disclosure could allow investors to evaluate the reasonableness of the registrant's estimates and assumptions, which are used to prepare the registrant's financial statements. Although current accounting standards require registrants to consider how climate-related matters may intersect with and affect the financial

[76] SEC Staff Accounting Bulletin No. 99 (Aug. 12, 1999), https://www.sec.gov/interps/account/sab99.htm.
[77] *See* Nick Grabar et al., The SEC's Climate Proposal – Top Points for Comment, Cleary M&A & Corp. Governance Watch (Apr. 19, 2022), https://www.clearymawatch.com/2022/04/the-secs-climate-proposal-top-points-for-comment/ ("the 1% threshold is inexplicably low"); *cf.* Shivaram Rajgopal, Contributor, CFO Network, The SEC's Attempt To Write Generally Accepted Climate Principles -- Part II, Forbes (Apr. 1, 2022) (on file with CII) (describing the complications of calculating a proposed 1% threshold); *see generally* The SEC's Attempt to Write Generally Accepted Climate Principles with Shivaram Rajgopal, Voice Corp. Governance (Apr. 28, 2022), *available at* https://www.cii.org/podcasts (discussing a range of issues relating to Proposed Rule, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*).
[78] *See, e.g.,* Commissioner Hester M. Peirce, Statement, We are Not the Securities and Environment Commission – At Least Not Yet n.60 (Mar. 21, 2022), https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321 ("The Commission explains that this threshold is set at a level that allows firms to avoid costs 'for instances where the impact is likely to be quite small, while providing assurance to investors that more significant impacts are reflected in line item reporting' [and] . . . [a] materiality qualifier would have been a better way to strike the balance.").
[79] 87 Fed. Reg. at 21,372 (emphasis added).
[80] *See id.* at 21,465 (proposed § 210.14–02(g)-(h)).

> statements, including their impact on estimates and assumptions, the nature of the climate-related events and transition activities discussed in the proposed rules, which may manifest over a longer time horizon, necessitate targeted disclosure requirements to elicit decision-useful information for investors in a consistent manner. We also note that some registrants have already provided disclosure along the lines of the proposed requirements, which lends support to the feasibility of making such disclosures. By way of example, the proposed climate-related events and impacts relating to a transition away from greenhouse gas producing products and activities could affect a registrant's asset values and may result in asset impairments. The effect on asset values and the resulting impairments could, in turn, affect a registrant's assumptions when calculating depreciation expenses or asset retirement obligations associated with the retirement of tangible, long-lived assets. Providing related disclosure could help an investor understand if a registrant would be responsible for removing equipment or cleaning up hazardous materials sooner than originally planned due to a severe weather event.[81]

SEC Request for Comment 93. *How would investors use GHG emissions disclosures to inform their investment and voting decisions? How would such disclosures provide insight into a registrant's financial condition, changes in financial condition, and results of operations? How would such disclosures help investors evaluate an issuer's climate risk-related exposure? Would such disclosures enable investors to better assess physical risks associated with climate-related events, transition risks, or both types of risks?*[82]

CII Response. CII believes that many investors would use the Proposed Rule's GHG emissions disclosures as a source of information to better understand climate change and the related economic transition's effect on companies, industries and countries.[83] The information could assist investors in considering actions, including proxy voting actions, to mitigate risk or identify investment opportunities.[84] More specifically, we generally agree with the SEC's assessment that:

> [For] institutional investors . . . GHG emissions information is important to investment decisions for various reasons, including because GHG emissions data is quantifiable and comparable across industries and can be particularly useful in conducting a transition risk analysis; it can be used to evaluate the progress in

[81] *Id.* at 21,372 (footnotes omitted).
[82] *Id.* at 21,381 (emphasis added).
[83] *See, e.g.,* Letter from Kirsty Jenkinson, Investment Director & Aeisha Mastagni, Portfolio Manager, California State Teachers' Retirement System to The Honorable Gary Gensler, Chair, U.S. Securities and Exchange Commission 2 (June 4, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8888208-240907.pdf ("As a prudent and diversified global investor, we need to understand the transition's effects on companies, industries, and countries and consider actions to mitigate risk and identify investment opportunities").
[84] *See id.* at 4 (describing how emission disclosures "would support our investment analysis and decision-making"); *cf.* Marc Hafstead et al., Indirect Emissions Disclosures Are Important but Tricky, Resources (May 4, 2022), https://www.resources.org/special-series-sec/indirect-emissions-disclosures-are-important-but-tricky/ (Virginia Harper Ho, City University of Hong Kong: "Many of the largest institutional investors and asset managers also need to be able to measure GHG emissions for companies they invest in, either to meet their own 'net-zero' goals or to comply with sustainable finance disclosure regulations outside the United States.").

> meeting net-zero commitments and assessing any associated risks; and it may be relevant to investment or voting decisions because GHG emissions could impact the company's access to financing, as well as its ability to reduce its carbon footprint in the face of regulatory, policy, and market constraints.[85]

***SEC Request for Comment* 97.** *Should we require a registrant to disclose its total Scope 1 emissions and total Scope 2 emissions separately for its most recently completed fiscal year, as proposed? Are there other approaches that we should consider?*[86]

CII Response. CII generally supports the Proposed Rule requiring a registrant to disclose its total Scope 1 and total Scope 2 emissions separately for its most recently completed fiscal year.[87] Our support for this proposed disclosure is consistent with the view expressed in the CII June Letter:

> We generally believe that, at a minimum, information about Scope 1 and Scope 2 greenhouse gas emissions can be quantified and measured and should be reported by registrants. While greenhouse gas emissions may not be critical to the health of every registrant, this issue has become critical for many investors who are serious about assessing the climate-related risks and opportunities across their portfolios.[88]

We agree with the SEC's finding that:

> Those types of emissions result directly or indirectly from facilities owned or activities controlled by a registrant. The relevant data for calculating Scopes 1 and 2 emissions should be reasonably available to registrants, and the relevant methodologies are fairly well-developed. Registrants with large stationary sources of emissions already report Scope 1 emissions data to the EPA, and the EPA provides detailed methodologies for a range of industries with significant Scope 1 emissions. The EPA also provides detailed guidance for the calculation of Scope 2 emissions, which, although classified as ''indirect emissions,'' are generated by direct activities of the registrant in using purchased energy.[89]

SEC Request for Comment 98. *Should we require a registrant to disclose its Scope 3 emissions for the fiscal year if material, as proposed? Should we instead require the disclosure of Scope 3 emissions for all registrants, regardless of materiality? Should we use a quantitative threshold, such as a percentage of total GHG emissions (e.g., 25%, 40%, 50%) to require the disclosure of Scope 3 emissions? If so, is there any data supporting the use of a particular percentage threshold? Should we require registrants in particular industries, for which Scope 3 emissions are a high percentage of total GHG emissions, to disclose Scope 3 emissions?*[90]

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[85] 87 Fed. Reg. at 21,373-34 (footnotes omitted).
[86] *Id.* at 21,381 (emphasis added).
[87] *See id.* at 21,468 (proposed Item 1504(b)).
[88] *See* Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to The Honorable Gary Gensler, Chair, U.S. Securities and Exchange Commission at 9 (footnotes omitted).
[89] 87 Fed. Reg. at 21,377 (footnotes omitted).
[90] *Id.* at 21,381 (emphasis added).

CII Response. CII generally supports the Proposed Rule's requirement that a registrant disclose its Scope 3 emissions for the fiscal year if material.[91] We believe that disclosure of Scope 3 emissions data could help investors understand transition risks – and potential disruptions in a company's supply chain, business model and cash flows.[92] And we agree with the SEC's analysis that:

> [C]apital markets have begun to assign financial value to this type of metric, such that it can be material information for investors about financial risks facing a company. Scope 3 emissions disclosure is an integral part of both the TCFD framework and the GHG Protocol, which are widely accepted. It also has been widely recognized that, for some companies, disclosure of just Scopes 1 and 2 emissions could convey an incomplete, and potentially misleading, picture.[93]

We acknowledge that we did not support mandating disclosure of Scope 3 emissions in the CII June Letter.[94] The CII June Letter explained:

> It is clear to us that many investors are demanding that more information about Scope 3 emissions. A shareholder resolution asking Chevron to make substantial reductions to its Scope 3 emissions gained 61% of the vote this proxy season. However, as SEC Commissioner Elad L. Roisman has argued: "[a] company's ability to calculate Scope 3 emissions depends on it gathering information from sources wholly outside the company's control, both upstream and downstream from its organizational activities."[95]

We note at the outset that the Proposed Rule's materiality qualifier for disclosure of Scope 3 emissions is consistent with the reference to "materiality" in our **Statement on Corporate Disclosure of Sustainability Performance** and **Statement on Company Disclosure**.[96] We, however, remain concerned about the challenges that companies will face in calculating Scope 3

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[91] *See id.* at 21,468 (proposed § 229.1504(c)(1)).
[92] *See, e.g.,* Allison Handy & Broc Romanek, Public Chatter, The SEC's Climate Disclosure Proposal: A Comprehensive Look, Perkinscoie (Apr. 2022), https://www.publicchatter.com/wp-content/uploads/sites/51/2022/04/Allison-Broc-Climate-Proposal-1.pdf ("Disclosure of Scope 3 emissions data could help investors understand transition risks – and potential disruptions in a company's supply chain, business model and cash flows.").
[93] 87 Fed. Reg. at 21,381 (footnotes omitted); *cf.* Shivaram Rajgopal, Contributor, CFO Network, Why Do Critics Claim That the SEC Has Over-Reached with Climate Risk Disclosures?, Forbes (describing how "if scope 3 is exempted, companies will have incentives to repackage scope 1 and 2 emissions as scope 3"); Witold Henisz, The Benefits of Corporate Disclosure, Knowledge at Wharton (Apr. 12, 2022), https://knowledge.wharton.upenn.edu/article/the-benefits-of-the-secs-climate-disclosure-rule/ ("Without it [Scope 3], companies would be heavily incentivized to shift their pollution to other businesses along their supply chain, especially foreign or private firms not accountable to the SEC."); Marc Hafstead et al., Indirect Emissions Disclosures Are Important but Tricky, Resources (Meredith Fowlie, University of California, Berkeley: "If firms were required by the SEC to disclose only their Scope 1 and Scope 2 GHG emissions, they would have an ability—and an incentive—to transfer the most carbon-intensive parts of their operations to firms with less onerous reporting requirements [and] [t]his behavior would reduce a firm's Scope 1 and Scope 2 emissions . . . .").
[94] Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to The Honorable Gary Gensler, Chair, U.S. Securities and Exchange Commission at 16 (footnotes omitted).
[95] *Id.*
[96] Statement on Corporate Disclosure of Sustainability Performance; Statement on Company Disclosure.

emissions, including Chairman Gensler's acknowledgement that the "methodologies for determining Scope 3 emissions currently aren't as well developed as the others are just yet."[97] Those concerns make it a close call for us as to whether mandating Scope 3 emission disclosures is consistent with the application our **Statement on Company Disclosure** providing for an assessment of a proposed disclosure's "[a]nticipated benefit to investors, net of the cost of collection and reporting."[98]

On balance, we have concluded that the anticipated benefit to investors of having more complete emission disclosures by mandating Scope 3 disclosures exceeds the cost of collecting and reporting the information because of the numerous accommodations the SEC has proposed to lessen the cost of the disclosures. Those accommodations, all of which we support, include:

- A transition period;[99]
- A liability safe harbor;[100]
- Limiting the proposed disclosure to value chain emissions that are overall material;[101]
- Not imposing a bright line quantitative threshold for the materiality determination;[102]
- Exempting SRCs;[103] and

[97] Chair Gary Gensler, Speech, "Building Upon a Long Tradition" – Remarks before the Ceres Investor Briefing; *see* Nick Grabar et al., The SEC's Climate Proposal – Top Points for Comment, Cleary M&A & Corp. Governance Watch ("For Scope 3 emissions, disclosure standards, definitions and techniques are still evolving."); Witold Henisz, The Benefits of Corporate Disclosure, Knowledge at Wharton (Scope 3 is "a big challenge, . . . because most firms don't know what's happening upstream or how to calculate what's going on downstream."); Commissioner Hester M. Peirce, Statement, We are Not the Securities and Environment Commission – At Least Not Yet ("The company's customers and suppliers may not track this [Scope 3] information.").

[98] Statement on Company Disclosure.

[99] *See* 87 Fed. Reg. at 21,381 ("But in light of the fact that a GHG emissions reporting regime may be incomplete without the reporting of Scope 3 emissions, we are proposing to include them, with an appropriate transition period . . . at the outset.").

[100] *Id.* ("But in light of the fact that a GHG emissions reporting regime may be incomplete without the reporting of Scope 3 emissions, we are proposing to include them, with an appropriate . . . safe harbor, at the outset."); *see also* Marc Hafstead et al., Indirect Emissions Disclosures Are Important but Tricky, Resources ("reporting on Scope 3 GHG emissions may give rise to higher liability risk for companies compared to other climate disclosures, since the reporting company cannot ensure the quality and accuracy of the information that it gets from third parties.").

[101] *See* 87 Fed. Reg. at 21,381 ("Although we have not proposed to exclude specific upstream or downstream activities from the scope of the proposed Scope 3 disclosure requirement, we have limited the proposed disclosure requirement to those value chain emissions that overall are material.").

[102] *See id*. ("We also have not proposed a bright-line quantitative threshold for the materiality determination as suggested by some commenters because whether Scope 3 emissions are material would depend on the particular facts and circumstances, making it difficult to establish a 'one size fits all' standard."); *see also* Marc Hafstead et al., Indirect Emissions Disclosures Are Important but Tricky, Resources (Meredith Fowlie, University of California, Berkeley: "The SEC proposal includes a 'materiality qualifier' that aims to balance the onerousness of Scope 3 reporting costs and the likelihood that a reasonable investor would consider these metrics as 'important when making an investment or voting decision' [and [t]his will be a difficult balance to strike[,] [b]ut it's a balance worth negotiating if we want to help investors understand the true climate impacts of their portfolio choices.").

[103] *See* 87 Fed. Reg. at 21,391 ("We believe that exempting SRCs from the proposed Scope 3 emissions disclosure requirement would be appropriate in light of the proportionately higher costs they could incur, compared to non-SRCs, to engage in the data gathering, verification, and other actions associated with Scope 3 emissions reporting, many of which may have fixed cost components."); *see also* Marc Hafstead et al., Indirect Emissions Disclosures Are Important but Tricky, Resources (Virginia Harper Ho, City University of Hong Kong: "Smaller public companies in particular may be less able to afford the added cost of collecting and reporting Scope 3 emissions data

- A conditional omission of required information.[104]

SEC Request for Comment 133. *Should we provide a safe harbor for Scope 3 emissions disclosure, as proposed? Is the scope of the proposed safe harbor clear and appropriate? For example, should the safe harbor apply to any registrant that provides Scope 3 disclosure pursuant to the proposed rules, as proposed? Should we limit the use of the safe harbor to certain classes of registrants or to registrants meeting certain conditions and, if so, which classes or conditions? For example, should we require the use of a particular methodology for calculating and reporting Scope 3 emissions, such as the PCAF Standard if the registrant is a financial institution, or the GHG Protocol Scope 3 Accounting and Reporting Standard for other types of registrants? Should we clarify the scope of persons covered by the language ''by or on behalf of a registrant'' by including language about outside reviewers retained by the registrant or others? Should we define a ''fraudulent statement,'' as proposed? Is the level of diligence required for the proposed safe harbor (i.e., that the statement was made or reaffirmed with a reasonable basis and disclosed in good faith) the appropriate standard? Should the safe harbor apply to other climate-related disclosures, such as Scopes 1 and 2 emissions disclosures, any targets and goals disclosures in response to proposed Item 1505 (discussed below), or the financial statement metrics disclosures required pursuant to Proposed Article 14 of Regulation S–X? Should the safe harbor apply indefinitely, or should we include a sunset provision that would eliminate the safe harbor some number of years, (e.g., five years) after the effective date or applicable compliance date of the rules? Should the safe harbor sunset after certain conditions are satisfied? If so, what types of conditions should we consider? What other approaches should we consider?*[105]

CII Response. CII generally supports the Proposed Rule providing a safe harbor for Scope 3 emissions.[106] As indicated in the ***CII Response*** to ***SEC Request for Comment 98***, and consistent with our **Statement on Company Disclosure**, we believe it is appropriate for the SEC to provide accommodations to lessen the cost of the collection and reporting of Scope 3 emissions in light of the unique challenges associated with this information. We are hopeful that in addition to reducing the cost of the Scope 3 disclosures the proposed safe harbor will, as one corporate law firm has indicated, "promote ESG disclosure that reconciles what the reporting-company system can produce with what investors are seeking."[107]

SEC Request for Comment 134. *Should we provide an exemption from Scope 3 emissions disclosure for SRCs, as proposed? Should the exemption not apply to a SRC that has set a target or goal or otherwise made a commitment to reduce its Scope 3 emissions? Are there other*

[and] [f]or this reason, the SEC plans to exempt smaller reporting companies from the requirement altogether . . . .").

[104] *See* 87 Fed. Reg. at 21,391 ("we note that Securities Act Rule 409 and Exchange Act Rule 12b–21, which provide accommodations for information that is unknown and not reasonably available, would be available for the proposed Scope 3 emissions disclosures").

[105] *Id.* (emphasis added).

[106] *Id.* at 21,469 (proposed § 229.1504(f)).

[107] Nick Grabar et al., The SEC's Climate Proposal – Top Points for Comment, Cleary M&A & Corp. Governance; *see* 87 Fed. Reg. at 21,391 ("It also may encourage more robust Scope 3 emissions information, to the extent registrants feel reassured about relying on actual third-party data as opposed to national or industry averages for their emissions estimates.").

classes of registrants we should exempt from Scope 3 emissions disclosure requirement? For example, should we exempt EGCs, foreign private issuers, or a registrant that is filing or has filed a registration statement for its initial public offering during its most recently completed fiscal year from the Scope 3 disclosure requirement? Instead of an exemption, should we provide a longer phase in for the Scope 3 disclosure requirements for SRCs than for other registrants?[108]

CII Response. CII generally supports the Proposed Rule providing for an exemption from Scope 3 emissions disclosure for SRCs.[109] As indicated in the ***CII Response*** to ***SEC Request for Comment 98*** and the ***CII Response*** to ***SEC Request for Comment 133,*** we believe it is appropriate for the SEC to provide accommodations to lessen the cost of the collection and reporting of Scope 3 emissions, including for SRCs.

SEC Request for Comment 135. *Should we require accelerated filers and large accelerated filers to obtain an attestation report covering their Scope 1 and Scope 2 emissions disclosure, as proposed? Should we require accelerated filers and large accelerated filers to obtain an attestation report covering other aspects of their climate-related disclosures beyond Scope 1 and 2 emissions? For example, should we also require the attestation of GHG intensity metrics, or of Scope 3 emissions, if disclosed? Conversely, should we require accelerated filers and large accelerated filers to obtain assurance covering only Scope 1 emissions disclosure? Should any voluntary assurance obtained by these filers after limited assurance is required be required to follow the same attestation requirements of Item 1505(b)–(d), as proposed?*[110]

CII Response. CII generally supports the Proposed Rule's requirement that accelerated filers and large accelerated filers obtain an attestation report covering their Scope 1 and Scope 2 emissions disclosure.[111] We generally agree with SEC Commissioner Caroline A. Crenshaw that "independent party reviews are . . . a meaningful step in promoting accuracy and . . . more reliable data."[112]

Our support for requiring attestation covering Scope 1 and Scope 2 emissions disclosure is conditional and is derived from our **Statement on Corporate Disclosure of Sustainability Performance**. As explained in the CII June Letter:

> [A]fter there has been sufficient implementation of processes and controls over the disclosure requirements, we believe reliability also requires that public companies obtain external assurance of the sustainability information they provide.
> . . . .
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> . . . [F]ollowing the sufficient implementation of processes and controls over the disclosure requirements, public companies over time should obtain external

[108] 87 Fed. Reg. at 21,391-92 (emphasis added).
[109] *See id*. at 21,469 (proposed § 229.1504(c)(3)).
[110] *Id.* at 21,396-97 (emphasis added).
[111] *See id.* at 21,469-70 (proposed § 229.1505(a)(1)).
[112] Commissioner Caroline A. Crenshaw, Statement on the Enhancement and Standardization of Climate-Related Disclosures for Investors (Mar. 21, 2022), https://www.sec.gov/news/statement/crenshaw-climate-statement-032122.

> assurance of the sustainability information those requirements provide. The assurance should be assessed pursuant to a framework and process that results in the level of reliability that is responsive to investors information needs.[113]

Among the conditions critical to our support for requiring attestation is the element of the proposed rulemaking that, in the words of SEC Commissioner Allison Herren Lee, "phase[s] reporting requirements in over time based on a company's size, and importantly, includes a phased-in requirement for verification or 'reasonable assurance' of GHG Scopes 1 and 2 for larger filers to help ensure the reliability of these disclosures."[114] We agree with the SEC that the proposed transition periods are necessary so that:

> [F]ilers would have significant time to develop processes to support their GHG emissions disclosure requirements and the relevant [disclosure controls and procedures] DCP, as well as to adjust to the incremental costs and efforts associated with escalating levels of assurance. During this transition period, GHG emissions attestation providers would also have time to prepare themselves for providing such services in connection with Commission filings.[115]

A second condition critical to our support for requiring attestation is the Proposed Rule's ultimate goal of obtaining reasonable assurance for the proposed Scope 1 and Scope 2 emissions disclosure.[116] We believe the goal of reasonable assurance is consistent with the use of the term "external assurance" in our **Statement on Corporate Disclosure of Sustainability Performance**.[117]

SEC Request for Comment 144. *Should we require a registrant to obtain a GHG emissions attestation report that is provided by a GHG emissions attestation provider that meets specified requirements, as proposed? Should one of the requirements be that the attestation provider is an expert in GHG emissions, with significant experience in measuring, analyzing, reporting, or attesting to GHG emissions, as proposed? Should we specify that significant experience means having sufficient competence and capabilities necessary to: (a) Perform engagements in accordance with professional standards and applicable legal and regulatory requirements and (b) enable the service provider to issue reports that are appropriate under the circumstances, as proposed? Should we instead require that the GHG emissions attestation provider have a*

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[113] *See* Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to The Honorable Gary Gensler, Chair, U.S. Securities and Exchange Commission at 8, 15 (footnotes omitted).
[114] Commissioner Allison Herren Lee, Statement, Shelter from the Storm: Helping Investors Navigate Climate Change Risk (Mar. 21, 2022), https://www.sec.gov/news/statement/lee-climate-disclosure-20220321; s*ee* 87 Fed. Reg. at 21,469-70 (proposed § 229.1505(a)(1)).
[115] 87 Fed. Reg. at 21,395; *see* Nick Grabar et al., The SEC's Climate Proposal – Top Points for Comment, Cleary M&A & Corp. Governance Watch ("The proposed phase-in period for this feature of the proposal recognizes the time . . . that will be required for an independent provider to give reasonable assurance on a company's emissions data."); *cf.* European Commission, Questions and Answers: Corporate Sustainability Reporting Directive Proposal (Apr. 21, 2021), *available at* Corporate Sustainability Reporting Directive al (europa.eu) ("Although the objective is to have a similar level of assurance for financial and sustainability reporting, a progressive approach is needed [and] [t]he Commission is proposing to start with a 'limited' assurance requirement.").
[116] *See* 87 Fed. Reg. at 21,469-70 (proposed 1505(a)(1)).
[117] Statement on Disclosure of Sustainability Performance.

specified number of years of the requisite type of experience, such as 1, 3, 5, or more years? Should we specify that a GHG emissions attestation provider meets the expertise requirements if it is a member in good standing of a specified accreditation body that provides oversight to service providers that apply attestation standards? If so, which accreditation body or bodies should we consider (e.g., AICPA)? Are there any other requirements for the attestation provider that we should specify? Instead, should we require a GHG emissions attestation provider to be a PCAOB-registered audit firm?[118]

CII Response. CII generally supports the Proposed Rule's requirement that a registrant obtain a GHG emissions attestation report that is provided by a GHG emissions attestation provider that meets specified requirements.[119] More specifically, we support the proposed requirement that the GHG emissions attestation provider is an expert in GHG emissions, with significant experience in measuring, analyzing, reporting or attesting to GHG emissions.[120] That proposed requirement is consistent with CII policies on **Auditor Independence**. Those policies include that the audit committee periodically consider "the experience, expertise and professional skepticism of the audit partner, manager and senior personnel assigned to the audit, and the extent of their involvement in performing the audit."[121] We agree with the SEC that the proposed expertise and experience requirements for the GHG attestation provider could assist corporate boards and investors in better assessing whether "the service provider preparing the attestation report has sufficient competence and capabilities necessary to execute the attestation engagement."[122]

SEC Request for Comment 146. *Should we require the GHG emissions attestation provider to be independent with respect to the registrant, and any of its affiliates, for whom it is providing the attestation report, as proposed? Should we specify that a GHG emissions attestation provider is not independent if such attestation provider is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that such attestation provider is not, capable of exercising objective and impartial judgment on all issues encompassed within the attestation provider's engagement, as proposed? The proposed provision is based on a similar provision regarding the qualification of an accountant to be an independent auditor under Rule 2–01 of Regulation S–X. Is Rule 2–01 an appropriate model for determining the independence of a GHG emissions attestation provider? Is being independent from a registrant and its affiliates an appropriate qualification for a GHG emissions attestation provider?*[123]

CII Response. CII generally supports the Proposed Rule's requirement that the GHG emissions attestation provider be independent with respect to the registrant, and any of its affiliates, for whom it is providing the attestation report.[124] We note that the proposed requirement is consistent with our policies on **Auditor Independence** and **Financial Gatekeepers**.

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[118] 87 Fed. Reg. at 21,400-01 (emphasis added).
[119] *See id.* at 21,470 (proposed § 229.1505(b)).
[120] *Id.* (proposed § 229.1505(b)(1)).
[121] § 2.13a Audit Committee Responsibilities Regarding Independent Auditors.
[122] 87 Fed. Reg. at 21,398.
[123] *Id.* at 21,400 (emphasis added).
[124] *See id.* at 21,470 (proposed § 229.1505(b)(2)).

Consistent with those policies, we agree with Commissioner Crenshaw that "[c]ompanies want to attract and retain investments, which can pose a conflict when companies have to disclose negative information [and] [i]ncluding an independent review reduces that conflict and yields higher quality and more reliable data."[125] And we support the SEC's analysis that:

> Similar to how assurance provided by independent public accountants improves the reliability of financial statements and disclosures and is a critical component of our capital markets, assurance of GHG emissions disclosure by independent service providers should also improve the reliability of such disclosure. Academic studies demonstrate that assurance provided by an independent auditor reduces the risk that an entity provides materially inaccurate information to external parties, including investors, by facilitating the dissemination of transparent and reliable financial information. We expect that GHG emissions disclosure would similarly benefit if assured by an independent service provider. Moreover, the potential conflicts of interest, or even the appearance of such conflicts of interest, between the GHG emissions attestation provider and the registrant could raise doubts for investors about whether they can rely on the attestation service and its report.[126]

We also support the SEC's conclusion that the proposed independence provisions "should help protect investors by requiring the GHG emissions attestation provider to be independent both in fact and appearance from the registrant, including its affiliates."[127]

SEC Request for Comment 151. *Should we include disclosure requirements when there is a change in, or disagreement with, the registrant's GHG emissions attestation provider that are similar to the disclosure requirements in Item 4.01 of Form 8–K and 17 CFR 229.304 (Item 304 of Regulation S–K)?*[128]

CII Response. CII would generally support revising the Proposed Rule to include disclosure requirements when there is a change in, or disagreement with, the registrant's GHG emissions attestation provider that are similar to the disclosure requirements in Item 4.01 of Form 8–K and 17 CFR 229.304 (Item 304 of Regulation S–K).[129]

CII's policies on **Auditor Independence** include two separate references indicating the importance of disclosure requirements when there is a change in, or a disagreement with a companies' external auditor.[130]

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[125] Commissioner Caroline A. Crenshaw, Statement on the Enhancement and Standardization of Climate-Related Disclosures for Investors.
[126] 87 Fed. Reg. at 21,399 (footnote omitted).
[127] *Id.*
[128] *Id.* at 21,400 (emphasis added).
[129] *See* Changes in and Disagreements with Accountants on Accounting and Financial Disclosure, 17 CFR § 229.304 (as amended Mar. 8, 1989), *available at* https://www.law.cornell.edu/cfr/text/17/229.304.
[130] § 2.13a Audit Committee Responsibilities Regarding Independent Auditors ("Even in the absence of egregious reasons, the committee should consider the appropriateness of periodically changing the auditor, bearing in mind factors that include, but are not limited to: . . . reasons cited by other companies for discontinuing their engagement of the same audit partner and/or auditor . . . ."); § 2.13g Disclosure of Reasons Behind Auditor Changes ("The audit committee should publicly provide to shareowners a plain-English explanation of the reasons for a change in the

We note that in 2008 the Final Rule of Department of the Treasury Advisory Committee on the Auditing Profession stated that:

> [T]he lack of transparency surrounding auditor changes . . . [is] detrimental to investor confidence in financial reporting. Testimony and commentary suggested greater transparency regarding auditor changes would compel audit committees to more closely evaluate auditor selection decisions and lead to greater competition in the audit market.
>
> The Committee believes that explicitly stating the reason for an auditor change will assist investors in determining the quality of financial reporting and subsequent investment decisions.[131]

For similar reasons, we believe that when there is a change in, or disagreement with, the registrant's GHG emissions attestation provider, disclosure requirements at least as robust as the requirements in Item 4.01 should be required.

SEC Request for Comment 154. *Should we require the attestation engagement and related attestation report to be provided pursuant to standards that are publicly available at no cost and are established by a body or group that has followed due process procedures, including the broad distribution of the framework for public comment, as proposed? Is the requirement of ''due process procedures, including the broad distribution of the framework for public comment'' sufficiently clear? Would the attestation standards of the PCAOB, AICPA, and IAASB meet this due process requirement? Are there other standards currently used in the voluntary climate-related assurance market or otherwise in development that would meet the due process and publicly availability requirements? For example, would verification standards commonly used by non-accountants currently, such as ISO 14064–3 and the AccountAbility's AA1000 Series of Standards, meet the proposed requirements? Are there standards currently used in the voluntary climate-related assurance market or otherwise under development that would be appropriate for use under the Commission's climate-related disclosure rules although they may not strictly meet the proposed public comment requirement? If so, please explain whether those standards have other characteristics that would serve to protect investors?*[132]

CII Response. CII generally supports the Proposed Rule's requirement that the attestation engagement and related attestation report be provided pursuant to standards that are publicly available at no cost and are established by a body or group that has followed due process procedures, including the broad distribution of the framework for public comment.[133]

CII's policy on **Independence of Accounting and Auditing Standard Setters**, reflects our member's view that the quality, comparability and reliability of financial information, "in turn,

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company's external auditors [and] [a]t a minimum, this disclosure should be contained in the same Securities and Exchange Commission (SEC) filing that companies are required to submit within four days of an auditor change.").

[131] Final Report, Advisory Committee on the Auditing Profession, Dep't Treasury VII:11-12 (Oct. 6, 2008) (footnotes omitted & on file with CII).

[132] 87 Fed. Reg. at 21,403 (emphasis added).

[133] *See id.* at 21,470 (proposed § 229.1505(a)(2)).

depends directly on the quality of the . . . standards that . . . auditors use in providing assurance that the preparers' . . . disclosures are free of material misstatements or omissions."[134] That same policy indicates that an effective standard setter should include a number of attributes, including a "thorough public due process that includes solicitation of investor input on proposals and careful consideration of investor views before issuing proposals or final standards . . . ."[135]

Similarly, CII generally agrees with the SEC that the Proposed Rule's requirement that the attestation engagement and related attestation report to be provided pursuant to standards that are established by a body or group that has followed due process procedures:

> [W]ould help to ensure that the standards upon which the attestation engagement and report are based are the result of a transparent, public, and reasoned process. This requirement should also help to protect investors who may rely on the attestation report by limiting the standards to those that have been sufficiently developed.[136]

SEC Request for Comment 164. *Should we require a registrant that is not required to include a GHG emissions attestation report pursuant to proposed Item 1505(a) to disclose within the separately captioned ''Climate-Related Disclosure'' section in the filing the following information, if the registrant's GHG emissions disclosure was subject to third-party attestation or verification, as proposed:*

- *(i) Identify the provider of such assurance or verification;*
- *(ii) Disclose the assurance or verification standard used;*
- *(iii) Describe the level and scope of assurance or verification provided;*
- *(iv) Briefly describe the results of the assurance or verification;*
- *(v) Disclose whether the third-party service provider has any other business relationships with or has provided any other professional services to the registrant that may lead to an impairment of the service provider's independence with respect to the registrant; and*
- *(vi) Disclose any oversight inspection program to which the service provider is subject (e.g., the AICPA's peer review program), each as proposed?*

Are there other disclosure items that we should require if a registrant has obtained voluntary assurance or verification of the climate-related disclosures? Are there any of the proposed disclosure items that we should omit? Should we specify parameters or include guidance on when the services provided by a third-party would be considered ''assurance'' or ''verification'' and thus require disclosure pursuant to the proposed rules? Should a registrant be required to furnish a copy of or provide a link to the assurance or verification report so that it is readily accessible by an investor?[137]

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[134] Independence of Accounting and Auditing Standard Setters.
[135] *Id.*
[136] 87 Fed. Reg. at 21,401.
[137] *Id.* at 21,405 (emphasis added).

CII Response. CII generally supports the Proposed Rule's requirement that if a registrant is not required to include a GHG emissions attestation report pursuant to proposed Item 1505(a) the registrant is still required to disclose within the separately captioned ''Climate-Related Disclosure'' section certain information about the third party attestation provider.[138] We are particularly supportive of the proposed disclosure of whether the third-party service provider has any other business relationships with, or has provided any other professional services to, the registrant that may lead to an impairment of the service provider's independence with respect to the registrant.[139] As indicated in the ***CII Response*** to ***SEC Request for Comment 146***, CII believes that being independent from a registrant is a critical qualification for a GHG emissions attestation provider.

We note that the proposed requirement is consistent with CII policies on **Auditor Independence** and **Financial Gatekeepers**. And we generally support the SEC's analysis that:

> Taken together, these proposed disclosure items should help investors understand the nature and reliability of the attestation or verification provided and help them assess whether the voluntary assurance or verification has enhanced the reliability of the GHG emissions disclosure. . . . The proposed approach should mitigate the compliance burden of the proposed GHG emissions disclosure rules, taking into consideration the proportionate compliance costs that may impact accelerated and large accelerated filers versus other types of filers, while providing transparency for investors about the level and reliability of the assurance or verification, if any, provided on the GHG emissions disclosures.[140]

SEC Request for Comment 183. *Should we adopt an alternative reporting provision that would permit a registrant that is a foreign private issuer and subject to the climate-related disclosure requirements of an alternative reporting regime that has been deemed by the Commission to be substantially similar to the requirements of proposed Subpart 1500 of Regulation S–K and Article 14 of Regulation S–X to satisfy its disclosure obligations under those provisions by complying with the reporting requirements of the alternative reporting regime (''alternative reporting provision'')? If so, should we require the submission of an application for recognition of an alternative reporting regime as having substantially similar requirements for purposes of alternative reporting regarding climate-related disclosures? Should we permit companies, governments, industry groups, or climate-related associations to file such an application? Should we require the applicant to follow certain procedures, such as those set forth in 17 CFR 240.0–13?*[141]

CII Response. CII would generally support the SEC adopting an alternative reporting provision that would permit, if certain conditions are met, a registrant that is a foreign private issuer and subject to the climate-related disclosure of an alternative reporting regime, to satisfy its disclosure obligations under the Proposed Rule by complying with the reporting requirements of the alternative reporting regime.

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[138] *See id.* at 21,471 (proposed § 229.1505(e)).
[139] *See id.* (proposed § 229.1505(e)(5)).
[140] *Id.* at 21,405.
[141] *Id.* at 21,400 (emphasis added).

We note that in the CII June Letter we stated:

> CII generally believes that a single set of global sustainability standards applicable to companies around the world, including registrants under the Commission's rules, would be the ideal solution to addressing investor needs for that information. We, however, do not disagree with the recently reported view of the Acting Director of the SEC's Division of Corporation Finance John C. Coates "that it would not be practical to establish uniform international disclosure requirements due to political and legal differences between countries . . . ."
>
> We also note that that we have identified a number of governance-related conditions that we believe the IFRS Foundation and the proposed new international sustainability standards board (SSB) must, at a minimum, meet in order to establish an effective international sustainability standard setter that would meet investor needs. Those conditions include the following:
>
>> . . . at a minimum, we believe the governance structure of the IFRS Foundation must be improved to include:
>> • A mechanism to increase funding (from sources other than voluntary contributions of those subject to its standards) to provide for a stable, secure and independent source of funding for the IFRS Foundation, the IASB, and an SSB;
>> • Significant, prominent and adequately balanced representation from qualified investors as Trustees of the IFRS Foundation, including that at least half of the investor Trustees possessing significant knowledge of, or have experience with, financial and investment analysis incorporating sustainability issues; and
>> • A thorough public due process that results in standards that satisfy in a timely manner investors' information needs.
>>
>> . . . In addition, at a minimum, we believe the governance structure of the proposed new SSB must include the following attributes:
>> • A full-time board and staff that are independent from prior employers or similar conflicts and possessing significant knowledge of, or experience with, financial and investment analysis incorporating sustainability issues;
>> • Significant, prominent and adequately balanced representation from qualified investors on the board of an SSB; and
>> • An investor advisory council to an SSB comprised of chief investment officers or equivalent from asset owners and asset managers possessing significant experience with financial and investment analysis incorporating sustainability issues.
>
> It is not yet clear to us whether those minimal conditions will be achieved. That said, we encourage the SEC to consider the global frameworks and standards when proposing disclosures on climate change and other sustainability-related standards.

> We also encourage the SEC to continue to work cooperatively with international regulators, policymakers and investors to try to establish a minimum international set of sustainability standards as a baseline that individual jurisdictions, including the United States, could consider and potentially build on.[142]

It remains unclear to us whether the IFRS Foundation and the newly formed International Sustainability Standards Board (ISSB) will at some point in the future meet the minimal conditions we set forth in the CII June Letter.[143] That said, we agree with SEC Chair Gensler that many of the provisions of the March 2022 [Draft] IFRS S2 *Climate-related Disclosures* (IFRS S2) are similar to the provisions of the Proposed Rule.[144]

We observe that IFRS S2 as proposed appears to be superior to the Proposed Rule in at least one important respect: it proposes industry-based climate risk disclosure standards.[145] As we explained in the CII June Letter:

> CII generally believes, consistent with our Statement on Corporate Disclosure of Sustainability Performance, that climate change reporting standards that take into account appropriate sector and industry considerations, when combined with a set of principles-based and rules-based disclosures for all public companies, are more likely to meet investors' needs. Industry specific standards are an important component of an overall disclosure framework.
>
> As indicated . . . we generally believe that industry-focused standards should over time be developed by an independent, private sector standard setter or setters that the SEC determines has met the attributes of an effective standard setter as described in our policy on Independence of Accounting and Auditing Standard Setters and Statement on Corporate Disclosure of Sustainability Performance.[146]

We share the SEC's concerns that "the potential lack of consistency and comparability of the disclosure between [a registrant that is a foreign private issuer] . . . and other registrant[s] might

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[142] *See* Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to The Honorable Gary Gensler, Chair, U.S. Securities and Exchange Commission at 13-15 (footnotes omitted).

[143] IFRS S2 Climate-related Disclosures, IFRS Sustainability 7 (draft Mar. 2022), https://www.ifrs.org/content/dam/ifrs/project/climate-related-disclosures/issb-exposure-draft-2022-2-climate-related-disclosures.pdf (describing the lack of full due process of ISSB exposure drafts "prior to the ISSB being quorate.").

[144] *See* Chair Gary Gensler, Speech, "Building Upon a Long Tradition" – Remarks before the Ceres Investor Briefing ("A few days after the SEC's proposal came out, the International Sustainability Standards Board (ISSB) made its own proposal on global climate-related disclosure requirements [and] [i]t, too, proposes climate disclosures as a part of general purpose financial reporting, among other similarities with the SEC proposal.); *cf.* Letter from Janine Guillot, Chief Executive Officer, Value Reporting Foundation to Secretary Vanessa Countryman, U.S. Securities and Exchange Commission 6-7 (May 6, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20127884-289400.pdf (discussing "Key Areas of Consistency Between the Proposed Rule and the ISSB Climate Exposure Draft and Opportunity for Further Consistency").

[145] *See* IFRS S2 Climate-related Disclosures, IFRS Sustainability at 49-56 (Appendix B, Industry-based disclosure requirements).

[146] *See* Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to The Honorable Gary Gensler, Chair, U.S. Securities and Exchange Commission at 10 (footnote omitted).

impose costs on investors [and] [i]nvestors might not [be] able to compare across firms using different disclosure presentations, or may have to incur additional costs in order to do so."[147] We, however, believe that for foreign private issuers those concerns may be offset, at least in part, by the potential for IFRS S2 when finalized to include industry-based climate risk disclosures.[148]

As a result, on balance, we would potentially support the SEC adopting a finalized IFRS S2 as an alternative reporting provision for a registrant that is a foreign private issuer if, at a minimum, all of the following conditions have first been met: (1) the IFRS Foundation and ISSB satisfy the minimal governance conditions we described in the CII June Letter; (2) the Commission determines that the requirements of the IFRS S2 final standard are substantially similar to the requirements of the final rule resulting from the Proposed Rule; (3) the Commission determines that there is "[a] clear, rigorous and consistent mechanism for enforcement"[149] of the IFRS S2 final standard for foreign private issuers; (4) the Commission determines that the foreign private issuer filing is in full compliance with the English language version of IFRS S2 final standard as published by the ISSB; [150] and (5) any other "caveats or additions" the Commission determines are necessary or appropriate to meet the needs of investors.[151]

SEC Request for Comment 189. *An International Sustainability Standards Board (ISSB) has recently been created, which is expected to issue global sustainability standards, including climate-related disclosure standards. If we adopt an alternative reporting provision, should that provision be structured to encompass reports made pursuant to criteria developed by a global sustainability standards body, such as the ISSB? If so, should such alternative reporting be limited to foreign private issuers, or should we extend this option to all registrants? What conditions, if any, should we place on a registrant's use of alternative reporting provisions based on the ISSB or a similar body*?[152]

As indicated, CII would generally support the Commission's adoption of an alternative reporting provision for foreign private issuers structured to encompass reports made pursuant to criteria

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[147] 87 Fed. Reg. at 21,451.
[148] *See, e.g.,* IFRS Sustainability, Basis for Conclusions on [Draft] IFRS S2 Climate-Related Disclosures 10 (Mar. 2022), https://www.ifrs.org/content/dam/ifrs/project/climate-related-disclosures/issb-exposure-draft-2022-2-basis-for-conclusions-climate-related-disclosures.pdf (noting "strong demand among the investor community for information that would enhance its ability to compare the climate-related performance of entities with similar business models, as well as to quantify relevant benchmarks for the assessment of entity performance related to industry-specific (or activity specific) drivers and consequences of climate-related risks and opportunities").
[149] Independence of Accounting and Auditing Standard Setters.
[150] *Cf.* Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to Nancy M. Morris, Secretary, Securities and Exchange Commission 2 (Sept. 24, 2007), https://www.sec.gov/comments/s7-13-07/s71307-84.pdf ("we generally support the Commission's views expressed in the Proposed Rule that any potential elimination of the U.S. GAAP reconciliation requirement should (1) 'apply only to a foreign private issuer that files its financial statements in full compliance with the English language version of IFRS *as published by the IASB* . . . .).
[151] Letter from Janine Guillot, Chief Executive Officer, Value Reporting Foundation to Secretary Vanessa Countryman, U.S. Securities and Exchange Commission at 8; *cf.* Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to Nancy M. Morris, Secretary, Securities and Exchange Commission at 2 ("we generally support the Commission's views expressed in the Proposed Rule that any potential elimination of the U.S. GAAP reconciliation requirement should . . . (2) be 'premised on the IASB's sustainability, *governance* and continued operation in a stand-alone manner as a standard setter . . .'").
[152] 87 Fed. Reg. at 21,410 (emphasis added & footnote omitted).

developed by the ISSB subject to certain qualifying conditions. We, however, consistent with our policy on **Independence of Accounting and Auditing Standard Setters**, would not support extending an alternative reporting provision, such an IFRS S2 final standard, to all SEC registrants at this time. See ***CII Response*** to ***SEC Request for Comment 183***.

SEC Request for Comment 190. *Should we require registrants to tag the climate-related disclosures, including block text tagging and detail tagging of narrative and quantitative disclosures required by Subpart 1500 of Regulation S–K and Article 14 of Regulation S–X in Inline XBRL, as proposed? Should we permit custom tags for the climate-related disclosures?*[153]

CII Response. CII generally supports the Proposed Rule's requirement that registrant's tag the climate-related disclosures in Inline XBRL.[154] We believe that "requiring Inline XBRL tagging benefits investors by making the disclosures more readily available and easily accessible for aggregation, comparison, filtering and other analysis, as compared to requiring a non-machine-readable data language."[155]

We agree with the SEC that:

> Requiring Inline XBRL tagging of the proposed climate-related disclosures would benefit investors by making the disclosures more readily available and easily accessible to investors, market participants and other users for aggregation, comparison, filtering, and other analysis, as compared to requiring a non-machine readable data language such as ASCII or HTML. This would enable automated extraction and analysis of climate-related disclosures, allowing investors and other market participants to more efficiently perform large-scale analysis and comparison of climate-related disclosures across companies and time periods.[156]

SEC Request for Comment 197. *Should we provide different compliance dates for large accelerated filers, accelerated filers, non-accelerated filers, or SRCs, as proposed? Should any of the proposed compliance dates in the table above be earlier or later? Should any of the compliance dates be earlier so that, for example, a registrant would be required to comply with the Commission's climate-related disclosure rules for the fiscal year in which the rules become effective?*[157]

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[153] *Id.* (emphasis added).
[154] *See id.* at 21,471 (proposed § 232.405).
[155] *See, e.g.,* Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Vanessa A. Countryman, Secretary, Securities and Exchange Commission 5-7 (Mar. 24, 2022), https://www.cii.org/files/issues_and_advocacy/correspondence/2022/March%2024%202022%20Rule%2010b5-1%20(final).pdf.
[156] 87 Fed. Reg. at 21,410.
[157] *Id.* at 21,412 (emphasis added).

CII Response. CII generally supports the Proposed Rule providing different compliance dates for large accelerated filers, accelerated filers, non-accelerated filers or SRCs.[158] We agree with the SEC that:

> [I]nitially applying the disclosure requirements to the more limited pool of large accelerated filers would be appropriate, because many large accelerated filers are already collecting and disclosing climate-related information, have already devoted resources to these efforts, and have some levels of controls and processes in place for such disclosure. In comparison, registrants that are not large accelerated filers may need more time to develop the systems, controls, and processes necessary to comply with the proposed rules, and may face proportionately higher costs. Accordingly, we propose to provide them additional time to comply.
>
> . . . In order to provide sufficient time for registrants to make the necessary arrangements to begin gathering and assessing such data, we are proposing an additional one-year phase-in period for the Scope 3 emissions disclosure requirements. As previously mentioned, we also are proposing an exemption for SRCs from the proposed Scope 3 emissions disclosure provision.[159]

In addition, as indicated in the ***CII response*** to ***SEC Request for Comment 135***, and consistent with our **Statement on Corporate Disclosure of Sustainability Performance**, we believe it is critical that the final rule provides sufficient time for registrants to develop and implement processes and controls over the proposed disclosure requirements before being required to obtain reasonable assurance over the sustainability information those requirements provide. We, therefore, respectfully recommend that in addition to the Proposed Rule's transition periods that all of the proposed initial compliance dates be deferred by at least one year to better ensure that the resulting disclosures are based on information that is more "consistent and reliable."[160]

SEC Request for Comment 198. *Should we provide a compliance date for the proposed Scope 3 emissions disclosure requirements that is one year later than for the other disclosure requirements, as proposed? Should the compliance dates for the Scope 3 emissions disclosure requirements be earlier or later? Should the compliance date for the Scope 3 emissions*

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[158] *See id*. at 21,469-70 (proposed § 229.1505(a)(1)).
[159] *Id.* at 21,412.
[160] *See* U.S. Securities and Exchange Commission Small Business Capital Formation Advisory Committee, SECWire (May 6, 2022) (on file with CII) (comments of Betty Huber, Partner and Global Co-Chair of the Environmental, Social, and Governance Practice at Latham and Watkins in New York: "So, as we read it, the proposal would have like large accelerated filers . . . would have to start collecting data and making disclosures for calendar year 2023 to show up in the 10-K filed in 2024 [and] . . . some investors are asking for . . . giving a little more time to regularize the market to ensure that the data would be consistent and reliable."); *see also* Nick Grabar et al., The SEC's Climate Proposal – Top Points for Comment, Cleary M&A & Corp. Governance Watch (commenting that the proposed timeline is not realistic, in part, because: "Companies will need to . . . work with their auditors to ensure that the accounting standards are being properly applied to climate-related impacts [and] [a]uditors may also want to perform dry runs of their accounting procedures in the quarters prior to implementation of the proposed rules – in other words, later this year.").

disclosure requirements depend upon whether the registrant is a large accelerated filer, accelerated filer, or non-accelerated filer?[161]

CII Response. CII generally supports the Proposed Rule's requirement providing a compliance date for the proposed Scope 3 emissions disclosure requirements that is one year later than for the other disclosure requirements.[162] See ***CII Response*** to ***SEC Request for Comment 197***.

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We appreciate the opportunity to provide our views on the Request for Input. We would be pleased to discuss our comments or answer any questions regarding the views expressed in this letter.

Sincerely,

Jeff Mahoney

Jeff Mahoney
General Counsel

[161] 87 Fed. Reg. at 21,312 (emphasis added).
[162] *See id.* at 21,412 (providing a chart of the proposed disclosure compliance dates).