Council of Institutional Investors®
The voice of corporate governance

Via Hand Delivery

July 9, 2019

The Honorable Carolyn B. Maloney
Chair
Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Bill Huizenga
Ranking Member
Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

*Re: July 10, 2019, Hearing entitled "Building a Sustainable and Competitive Economy: An Examination of Proposals to Improve Environmental, Social and Governance Disclosures"*[1]

Dear Madam Chair and Ranking Member Huizenga:

I am writing on behalf of the Council of Institutional Investors (CII) to express our appreciation for holding the above referenced hearing and to provide you with our views. We would respectfully request that this letter be made a part of the hearing record.

CII is a nonprofit, nonpartisan association of 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. Our associate members include a range of asset managers with more than $35 trillion in assets under management.[2]

[1] Hearings, Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, Building a Sustainable and Competitive Economy: An Examination of Proposals to Improve Environmental, Social and Governance Disclosures (July 10, 2019), https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=404000.
[2] 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.

**Environmental, Social, and Governance (ESG) Disclosures**

CII's members look to public company disclosure documents for information about the full range of material risks facing registrants, including risks that may be labeled ESG.[3] A number of these risks have assumed greater importance in recent years from the perspective of investors[4] and companies.[5]

For example, a recent survey of Securities and Exchange Commission (SEC) filings found a "significant increase" in environmental and social disclosures from 2018 to 2019 in seven categories.[6] The increase in those disclosures may reflect a growing body of research associating various ESG factors with improved corporate performance.[7]

To our great disappointment, CII has found disclosures on various ESG risks too often consist of boilerplate risk identification without adequate discussion of how those risks apply to the individual registrant.[8] And many registrant' disclosures relating to ESG risks provides no basis for investors to understand the scope of the risks or the likelihood of their coming to fruition.[9]

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[3] *See* Letter from Kenneth A. Bertsch, Executive Director, Council of Institutional Investors to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission 6 (July 8, 2016), https://www.sec.gov/comments/s7-06-16/s70616-49.pdf ("CII's members look to registrants' disclosure documents for information about the full range of material risks facing registrants, including environmental, social and governance ("ESG") risks.").

[4] *See* Dennis Fritsch, PhD, ESG: Do You or Don't You, RI & UBS 34 (June 11, 2019) (registration required), https://www.ubs.com/global/en/asset-management/insights/sustainable-and-impact-investing/2019/esg-do-you-or-don-t-you.html (survey of investors finding that "the top advantage[] of taking ESG into account . . . were an improved risk profile"); The Application of Environmental, Social, and Governance Principles in Investing and the Role of Asset Managers, Proxy Advisors, and Other Intermediaries, Hearing Before the S. Comm. on Banking, Hous. & Urban Affairs, 116th Cong. (Apr. 2, 2019) (Testimony of John Streur, President and CEO, Calvert Research and Management), https://www.banking.senate.gov/imo/media/doc/Streur%20Testimony%204-2-19.pdf ("in 2018, more than $12 trillion in the United States (U.S.) was invested in strategies that consider ESG criteria—a 38% increase since 2016").

[5] *See* Era Aganosti, White & Case LLP et al., E&S Disclosure Trends in SEC Filings 2018-2019, White & Case (June 26, 2019), https://www.whitecase.com/publications/alert/es-disclosure-trends-sec-filings-2018-2019 ("Forty-seven of the companies surveyed (or 94 per cent) increased their E&S disclosures in Form 10-Ks and proxy statements between 2018 and 2019."); Testimony of John Streur ("Eight years ago, just 20% of the S&P 500 provided any type of reporting on relevant ESG risks [and] [t]oday, 85% of companies in the S&P 500 actively report on ESG risks factors."); Governance & Accountability Institute, Inc., "FLASH REPORT: 85% of S&P 500 Index Companies Publish Sustainability Reports in 2017 (Mar. 20, 2018), https://www.ga-institute.com/press-releases/article/flash-report-85-of-sp-500-indexR-companies-publish-sustainability-reports-in-2017.html ("From 2013 to 2017, the frequency of [ESG] reporting has increased each year, **now up to 85% of companies reporting in 2017**").

[6] Era Aganosti.

[7] *See* Rebecca Moore, Investing, ESG Investments a Good Option for Retirement Plans, PLANSPONOR, Mar. 27, 2019, https://www.plansponsor.com/esg-investments-good-option-retirement-plans/ ('"a growing body of research' that suggests companies with a holistic consideration of ESG measures have better long-term financial outcomes and may provide more opportunities for profitable investing endeavors"); Gunnar Freide et al., ESG and Financial Performance: Aggregated Evidence From More Than 2000 Empirical Studies, 5(4) J. Sustainable Fin. & Investment 210 (2015), https://www.tandfonline.com/doi/full/10.1080/20430795.2015.1118917 (aggregating the results of about 2200 individual studies and concluding that most found positive correlations between corporate financial performance and ESG investing).

[8] Letter from Kenneth A. Bertsch at 7.

[9] *Id.*

CII believes that clearer and more comparable information about key ESG risks would benefit investors and the U.S. capital markets. In that regard, we are encouraged by private sector efforts to harmonize ESG disclosures such as those of the Corporate Reporting Dialogue (CRD).[10] It is our understanding that the CRD is designed to more closely align ESG disclosure standards among a number of competing corporate reporting frameworks.[11]

We think that adoption by investors and issuers of common ESG disclosure standards would be a highly significant market improvement, but we are not yet confident this can come about through private, non-mandatory work. However, even should a voluntary approach fall short on providing comparable and reliable disclosures of key metrics, we think the work of the participants in the CRD and related efforts will be important in clarifying best practice and informing proposed legislation or eventual rule-making.[12]

Aside from this, CII believes that as part of its routine disclosure reviews, the SEC staff should actively challenge issuers to disclose material ESG risks. That disclosure should, at a minimum, be sufficiently detailed to provide insights as to how management plans to mitigate risks relating to ESG issues, and how associated decisions could be material to a company's business or their investors.[13]

Climate-Related Disclosures

We agree with the conclusion of the recently released report of the CDP, formerly known as the Carbon Disclosure Project, that:

> The demand for climate-related information is growing. Understanding that inadequate information can lead to the mispricing of assets and a misallocation of

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[10] Press Release, CDSB, Leading Corporate Reporting Bodies Launch Two-Year Project for Better Alignment (Nov. 7, 2018), https://www.cdsb.net/harmonization/860/leading-corporate-reporting-bodies-launch-two-year-project-better-alignment ("Through this new project, participants will map their respective sustainability standards and frameworks to identify the commonalities and differences between them, jointly refining and continuously improving overlapping disclosures and data points to achieve better alignment, taking into account the different focuses, audiences and governance procedures.").

[11] *Id.* ("The Corporate Reporting Dialogue was launched four years ago as the principal working mechanism globally to achieve dialogue and alignment between the key standard setters and framework developers which have significant international influence on the corporate reporting landscape.").

[12] *See* Letter from Cynthia A. Williams et al. to Mr. Brent J. Fields, Secretary, Securities and Exchange Commission (October 1, 2018), https://www.sec.gov/rules/petitions/2018/petn4-730.pdf (calling for the development of "a comprehensive framework requiring issuers to disclose identified environmental, social, and governance (ESG) aspects of each public-reporting company's operations"); Council of Institutional Investors, Podcast: The Voice of Corporate Governance, A New SEC Rulemaking Petition on ESG Disclosure with Rachel Curley (Oct. 3, 2018), https://www.cii.org/podcasts (discussing the October 2018 petition with the Securities and Exchange Commission for a rulemaking on ESG disclosures).

[13] *See* William Hinman, Director, Division of Corporation Finance, Remarks at the 18th Annual Institute on Securities Regulation In Europe (Mar. 15, 2019), https://www.sec.gov/news/speech/hinman-applying-principles-based-approach-disclosure-031519 ("And as they do so I would suggest they ask themselves whether their disclosure is sufficiently detailed to provide insight as to how management plans to mitigate material risks and how their decisions in the area of risk could be material to the business and their investors.").

> capital, more and more financial decision makers are demanding information on the business risks and opportunities associated with climate change.[14]

CII would expect that with more rigorous SEC staff oversight, issuer disclosures about climate related risks would be more robust. We believe the 2010 SEC guidance on disclosure relating to climate change[15] was helpful, and note recent industry comments that those requirements are clear.[16] And we commend William Hinman, the Director of the SEC's Division of Corporation Finance, for reminding issuers earlier this year that the 2010 SEC guidance "remains a relevant and useful tool for companies when evaluating their disclosure obligations concerning climate change matters."[17] However, we are unsure of the extent to which this guidance is reflected in SEC staff comment letters to companies on relevant disclosures.[18]

We acknowledge that the SEC's ability to improve climate related risk disclosures is, as indicated by the U.S. Government Accountability Office, significantly constrained by the absence of an agreed upon "framework for companies to use to report these disclosures."[19] Despite that constraint, however, we agree with many investors that the SEC could currently do more to promote improvements in the quality of disclosures of risks related to climate change.[20]

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[14] CDP, Global Climate Change Analysis 2018 (2019), https://www.cdp.net/en/research/global-reports/global-climate-change-report-2018.

[15] Commission Guidance Regarding Disclosure Related to Climate Change, Securities Act Release No. 9,106, Exchange Act Release No. 61,469, 75 Fed. Reg. 6,290 (Feb. 8, 2010), https://www.govinfo.gov/content/pkg/FR-2010-02-08/pdf/2010-2602.pdf.

[16] United States Government Accountability Office, Climate-Related Risks, SEC Has Taken Steps to Clarify Disclosure Requirement 25 (Feb. 2018), https://www.gao.gov/assets/700/690197.pdf ("representatives from five industry associations with whom we spoke all noted that they consider the current requirements for climate-related disclosures adequate"); *but see, e.g.*, Christian Weller, Workers Face Undisclosed Risks As Companies Often Don't Disclose Environmental, Other Challenges, Forbes, Apr. 2, 2019, https://www.forbes.com/sites/christianweller/2019/04/02/workers-face-savings-risks-as-companies-often-dont-disclose-environmental-other-challenges/#1bba802e7d9f (commenting that climate change guidance "left a lot of room for managers to either not disclose anything or to disclose little new or relevant information").

[17] William Hinman.

[18] *See* Alexandra Semenova, News, SEC Stops Prodding Companies to Detail Climate Change Impacts, BNA, July 16, 2018, https://news.bloomberglaw.com/corporate-law/sec-stops-prodding-companies-to-detail-climate-change-impacts ("The Securities and Exchange Commission last issued a climate change-related public comment letter in September 2016, when it asked Chevron Corp. to expand its risk factor disclosure related to California's greenhouse gas emission regulations.").

[19] United States Government Accountability Office at 27; s*ee, e.g.*, Michael Kapoor, News Article, U.K. Business, Politicians Back Environmental-Risk Reporting Push, Bloomberg L. (July 5, 2018) (registration required & on file with CII) ("the accounting profession . . . said that standard measurement practices for climate risks still need to be developed").

[20] *See, e.g.*, Ben Lefebvre & Anthony Adragna, Energy & Environment, Democrats Want Companies to Disclose their Climate Risks – and Fossil Fuel Industry is Worried, Politico, June 17, 2019, https://www.politico.com/story/2019/06/17/democrats-energy-industry-climate-risk-1483586 (discussing Securities and Exchange Commission lack action and noting that ''[i]nvestor groups support the idea of companies disclosing more information [about climate risk], which they said would help them determine where best to direct their dollars").

As one example, last month we submitted a letter to Director Hinman urging the SEC staff to revisit their approach to interpreting Rule 14a-8(i)(7),[21] the "ordinary business" exclusion of the shareholder proposal rule.[22] Our letter was in response to several controversial staff decisions, including three decisions permitting corporations to avoid a shareowner vote on voluntary resolutions intended to improve disclosure relating to climate change.[23]

CII plans to continue to support the efforts of our members and other institutional investors who have been urging companies to be more transparent about climate risks.[24] As has been recently reported, those efforts to-date have "helped drive the recent uptick in disclosures."[25] Those reports were confirmed by the recently issued 2019 Status Report of the Task Force on Climate-Related Financial Disclosures (TCFD Report).[26]

The TCFD Report found that progress was "being made to improve the availability and quality of climate-related financial information."[27] The TCFD Report, however, also identified the need "for companies to provide more clarity on the potential financial impact of climate-related issues on their businesses . . . [because] [w]ithout such information, users may not have the information they need to make informed financial decisions."[28] As indicated, we believe that more clarity about climate related risk disclosures would likely require an agreed upon framework for companies to report those disclosures.

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[21] Shareholder Proposals, 17 C.F.R. § 240.14-8(i)(7) (1995) (amended Sept. 16, 2010), *available at* https://www.law.cornell.edu/cfr/text/17/240.14a-8 (describing exclusion for "***Management functions:*** If the proposal deals with a matter relating to the company's ordinary business operations").

[22] Letter from Kenneth A. Bertsch, Executive Director, Council of Institutional Investors et al. to William H. Hinman, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission 5 (June 20, 2019), https://www.cii.org/files/issues_and_advocacy/correspondence/2019/2019%20June%20letter%20to%20SEC%20CorpFin%20on%2014a-8%20i7%20FINAL(1).pdf ("CII urges the Staff to revisit its approach to Rule 14a-8(i)(7) so that it is more consistent with the language and intent of the underlying rule.").

[23] *See, e.g.*, Ben Lefebvre & Anthony Adragna ("The . . . SEC has blocked shareholder resolutions aimed at requiring climate risk disclosures, arguing . . . that a climate measure directed at Exxon was an attempt by a subset of shareholders to "micromanage" the fossil fuel giant [and] [i]t made a similar ruling for oil and gas producer Devon Energy against a climate resolution in March.").

[24] *See* Chris Butera, Large Investor Coalition Pressures ESG Disclosure on 700 Companies, CIO, June 17, 2019, https://www.ai-cio.com/news/large-investor-coalition-pressures-esg-disclosure-700-companies/ ("A massive institutional investor consortium [including Washington State Investment Board and the New York Common Retirement Fund] is pushing more than 700 companies to reveal more on their environmental impact, including ExxonMobil, Amazon, and Volvo."); Brad Plumer, Companies See Climate Change Hitting Their Bottom Lines in the Next 5 Years, N.Y. Times, June 4, 2019, https://www.nytimes.com/2019/06/04/climate/companies-climate-change-financial-impact.html ("Some institutional Investors, such as the mutual fund company Vanguard Group and New York State's pension fund, have started to urge companies to be more transparent about their climate exposure").

[25] *Id.*

[26] Task Force on Climate-Related Financial Disclosures, 2019 Status Report (June 2019), https://www.fsb.org/wp-content/uploads/P050619.pdf.

[27] *Id.* at iv.

[28] *Id.*

Political Contribution Disclosures

CII policy favors full disclosure of corporate political spending. CII's member-approved policy states:

> The board should develop and disclose publicly its guidelines for approving charitable and political contributions. The board should disclose on an annual basis the amounts and recipients of all monetary and non-monetary contributions made by the company during the prior fiscal year. Any expenditures earmarked for political or charitable activities that were provided to or through a third-party should be included in the report.[29]

CII commented in support of a 2011 "Petition to require public companies to disclose to shareholders the use of corporate resources for political activities" (File No. 4-637).[30] In that comment letter, we emphasized the importance of disclosure in allowing shareholders to evaluate whether corporate political spending serves their interests, as contemplated by the majority opinion in *Citizens United v. Fed. Election Comm'n*[31] invalidating certain limitations on corporate political spending.[32] Our comment also expressed the view that uniform disclosure requirements are preferable to reliance on voluntary disclosure, which may lack consistency.[33]

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CII shares your goal of building a sustainable and competitive economy. We agree that achieving that goal necessarily includes improving ESG disclosures.

As indicated, CII also agrees that legislation may be necessary to improve ESG disclosures. In that regard, we thank you again for holding this important and timely hearing. We would advocate that any legislative or rulemaking proposals to improve ESG disclosures be developed in a deliberative manner that balances the needs of investors for reliable and complete information with limiting any unnecessary regulatory burden.

We look forward to continuing to provide input to you, members of the Subcommittee, and staff on legislative, regulatory, and private sector efforts to improve ESG disclosures. If we can

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[29] Council of Institutional Investors, CII Corporate Governance Policies, § 2.14b Disclosure (updated Oct. 24, 2018), https://www.cii.org/files/10_24_18_corp_gov_policies.pdf.

[30] Letter from Glenn Davis, Senior Research Associate, Council of Institutional Investors to Ms. Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission 1 (Oct. 19, 2011), https://www.sec.gov/comments/4-637/4637-9.pdf.

[31] Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010), *available at* https://supreme.justia.com/cases/federal/us/558/310/.

[32] *See* Letter from Glenn Davis at 2 ("Developments since the adoption of the Council's policy in 2006, including the 2010 Supreme Court decision in Citizens United v. Federal Election Commission, have underscored the appropriateness of full disclosure and robust oversight of corporate political spending.").

[33] *Id.* (commenting on the "advantage to investors of having complete, uniform disclosure requirements").

answer any questions or provide additional information regarding this letter, please do not hesitate to contact me at 202.822.0800 or jeff@cii.org.

Sincerely,

Jeff Mahoney

Jeffrey P. Mahoney
General Counsel