



June 12, 2021

Gary Gensler
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

RE: Climate Change Disclosures

Dear Chairman Gensler:

Western Energy Alliance and the U.S. Oil & Gas Association are struck by the magnitude of the questions posed to the public on March 15, 2021 as “Public Input Welcomed on Climate Change Disclosures” and the implications arising should SEC seek to aggressively regulate in this space. We appreciate the opportunity to comment, yet must begin ourselves by asking the fundamental question of whether SEC has a Congressional mandate to regulate in the sphere of climate disclosure at all. Given that there is already a mutually beneficial exchange of information between public companies and their shareholders regarding climate change, perhaps SEC is best positioned to let that dynamic interchange continue rather than contemplate regulatory mandates and process which, by the very nature of government regulation, can do nothing but decrease the efficiency and vibrancy of that marketplace of ideas.

Western Energy Alliance represents 200 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. The Alliance represents independents, the majority of which are small businesses with an average of fourteen employees.

The US Oil & Gas Association is the only national association with Divisions in the states along the vital Gulf of Mexico. Because of the Gulf region’s importance to our current and future domestic energy supplies, national policy debates often center on the Gulf of Mexico, making our coordination of national and regional activities an important industry asset. The most distinguishing characteristic of the US Oil & Gas Association is the strong support it receives from a membership covering the full spectrum of the domestic petroleum industry.

1. How can the Commission best regulate, monitor, review, and guide climate change disclosures in order to provide more consistent, comparable, and reliable information for investors while also providing greater clarity to registrants as to what is expected of them? Where and how should such disclosures be provided? Should any such disclosures be included in annual reports, other periodic filings, or otherwise be furnished?

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- a. Before contemplating regulation in this space, SEC should recognize its lack of statutory authority. Certainly the commission must respond to changing market and finance industry conditions, but its powers are not unlimited. SEC appears to be going down the path of regulation despite the fact that the representatives of the American people have been unable and/or unwilling to pass into law legislation to address climate change. Certainly none has been passed granting SEC the authority to enact climate change regulation. In fact, Congress has not just failed to pass legislation, but has decisively passed regulation to the contrary. The Senate, for example, unanimously approved the Byrd-Hagel Resolution in 1997 by a vote of 95-0, calling for the rejection of the Kyoto Protocol, which President Clinton signed as part of the United Nations Framework Convention on Climate Change treaty process. When Senators John McCain (R-AZ) and Joe Lieberman (D-CT) introduced three successive “Climate Stewardship” Acts in 2003, 2005, and 2007, they all failed to garner the necessary support of their elected colleagues, despite extensive lobbying. A similar defeat greeted the Lieberman-Warner Climate Security Act in 2008. Until such time as Congress acts, SEC should not enact climate regulation as an end-run around Congress.
- b. Furthermore, SEC appears to be expanding its regulatory authority beyond investor protection and capital formation. Such mission creep is inappropriate in a democracy. While the stated goals by Commissioner Lee of improved access to healthcare and social justice may have merit, they are certainly not within the purview of SEC.¹
- c. Advocates for expanded corporate disclosures through government enforcement frequently claim there is already a consensus on climate change disclosure. But if corporate America and the finance industry are already in agreement on the subject, why does SEC need to regulate? Recent research suggests that companies that disclosure climate change risks achieve a higher valuation after disclosure.”² Since there is already a market incentive to disclosure, why should SEC discourage these positive developments? SEC should rather recognize that there are already other non-regulatory incentives for climate disclosure. The oil and natural gas industry is embracing ESG reporting and many companies include reporting of their efforts to reduce methane emissions, for example.
- d. SEC should also consider the appropriate timeline for financial regulation. Besides the uncertainties expressed by the International Panel on Climate Change (IPCC) in the science such as the extent of anthropogenic contributions and the amount of warming, projections of impacts are far into the future, at the end of the century, well outside any meaningful investor timeline.

Most corporate financial planning exists on a time-scale of a few years into the future, with long-range planning at the five- to ten-year scale. Business planning much beyond those timeframes can easily be rendered meaningless with changes in consumer behavior and

¹ [A Climate for Change: Meeting Investor Demand for Climate and ESG Information at the SEC](#), Commissioner Allison Herren Lee, speech to the Center for American Progress, March 15, 2021.

² [“Shareholder Activism and Firms' Voluntary Disclosure of Climate Change Risks,”](#) Caroline Flemmer, et. al., SSRN, October 22, 2019.

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technology. One need only observe changes over just the last five years in how news and entertainment are consumed, with the rise of social media and Netflix, to understand that much planning beyond a few years is more likely than not to be upended.

The timescale for assessing climate policy is generally to the year 2100, 80 years into the future. Thinking about planning from the 1940s forward 80 years to today seems like a meaningless exercise, as nobody could have predicted the information technology revolution or the pace of technological change in many other fields. Many analysts were predicting peak oil just a few decades ago and then the shale revolution happened. Besides the practical necessity of short- and medium-range predictions for most business decisions, an even more confounding dilemma is the uncertainty in the scientific projections of risks from climate change, with IPCC using various modeling scenarios with very different results. Making meaningful business decisions under those uncertainties is difficult at best, if not impossible.

- e. On the question of reliability of information, SEC should be concerned about the regulatory burden of producing volumes of information that may or may not be useful and actionable. SEC should be cautious of requiring data that do not help with decision-making and relevant assessments of risk. Kenneth Pucker, former chief operating officer at Timberland, wrote recently that “the impact of the measurement and reporting movement has been oversold,” going so far as to say that “the focus on reporting may actually be an obstacle to progress.”³ Despite a dedication to the goals of sustainability and ESG, Pucker describes how his company was unable to create meaningful quantitative measurements.

The essential problem with many measurements of climate impact and other ESG topics is a disagreement about what is good, valuable, reasonable, and just, and what is too much, too little, overly intensive, or even meaningful. The value judgments involved are those on which reasonable people can and do differ, not to mention the technical problems of how to actually measure and quantify those value judgements. Those advocating disclosure regulations typically profess a set of values arising from one ideological perspective, whereas the financial system that SEC oversees is a rich tapestry of thousands of diverse companies of wide-ranging size in multiple industries. SEC disclosure regulation that attempts to solve these problems by overriding the judgement of millions of managers and investors is not equitable or prudent.

With respect to what is “good,” the enormous benefits that oil and natural gas provide to humanity should be considered good in the context of climate change. Yes the burning of fossil fuels produce greenhouse gas emissions, but would humanity be better off without them? Without an alternative that does everything that oil and natural gas do 24/7, a modern, healthy, secure and yes, environmentally protective mode of existence is not possible. Our industry not only heats homes, provides mobility, and powers all facets of the economy, but puts food on the table, medicine in the cabinet, and delivers clean drinking water to the tap. Without the energy and products we provide, modern life is not possible. Providing more oil and natural gas to the world will bring those benefits to the billion people without sufficient energy and help lift them out of poverty.

³ [“Overselling Sustainability Reporting”](#), Kenneth P. Pucker, *Harvard Business Review*, May-June 2021.

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Oil and natural gas also provide a net benefit to the environment. Countries with greater access to reliable, affordable energy not only have higher standards of living, but also cleaner environments and healthier populations. Increased use of natural gas electricity generation leads to lower levels of air pollution and offers a tangible solution for climate change. Fuel switching to natural gas in the electricity sector is the number one reason the United States has reduced greenhouse gas emissions more than any other country since 2005.⁴ Intermittent wind and solar energy are not possible without backup, with natural gas electricity being the best backup source. SEC should recognize that the balance of benefits from oil and natural gas heavily outweigh the impacts. SEC should at least acknowledge that there is a value judgement that it should not presume to have the final answer to.

SEC should not overlook the increasing wealth, health, and safety achieved by countries like the United States that have abundant access to fossil fuels. The past 80 years have been marked by unprecedented improvements in life expectancy, prosperity, food security, infant mortality, and many other health and welfare factors. Deaths from malaria, the most consequential climate-sensitive disease, declined by 52% from 2000 to 2015 with the aide of petroleum-based pharmaceuticals.⁵ In the developing world where a billion people lack access to electricity, reliable power is needed to lift them out of poverty. Only natural gas, coal, nuclear, and hydropower reliably provide 24/7 power, yet all are opposed by activists who promote climate change disclosure schemes as a way to limit their use.

On the other hand, those same activists take it as a given that wind and solar energy are preferable. They are considered “good” over oil and natural gas, yet their extensive impacts on the environment are completely ignored. The huge footprint on the land and its associated impact on climate doesn’t seem to be considered, nor the extensive mining requirements. The International Energy Agency (IEA) has outlined the huge increase in minerals needed for a “clean energy transition” or “net-zero” agenda.⁶ IEA discusses the near impossibility of mining the necessary minerals, without which a complete transition is simply not realistic.

Advocates likewise overlook the enormous environmental, economic and social impacts and geopolitical risks. From human rights violations in China, particularly with Uyghur slave labor used to manufacture solar panels, to child labor in Congolese mines to the possibility of China withholding minerals, there are likewise many risks to investors from supposedly climate friendly industries. Our discussion is intended to point out to SEC that the value judgements inherent in elevating certain environmental, climate change, human rights and other ESG factors over financial risk can be fraught with value judgements that make disclosure highly subjective and complex.

⁴ [Inventory of US Greenhouse Gas Emissions and Sinks](#), Environmental Protection Agency (EPA), April 2020, p. ES-4. [Global CO2 Emissions in 2019](#), IEA, Paris, February 2020; [U.S. Energy-Related Carbon Dioxide Emissions, 2019](#), U.S. Energy Information Administration (EIA), September 2020.

⁵ [Our World in Data](#) provide many more indicators of improved human health and welfare made possible by fossil fuels.

⁶ [The Role of Critical Minerals in Clean Energy Transitions](#), IEA, May 2021

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2. What information related to climate risks can be quantified and measured? How are markets currently using quantified information? Are there specific metrics on which all registrants should report (such as, for example, scopes 1, 2, and 3 greenhouse gas emissions, and greenhouse gas reduction goals)? What quantified and measured information or metrics should be disclosed because it may be material to an investment or voting decision? Should disclosures be tiered or scaled based on the size and/or type of registrant? If so, how? Should disclosures be phased in over time? If so, how? How are markets evaluating and pricing externalities of contributions to climate change? Do climate change related impacts affect the cost of capital, and if so, how and in what ways? How have registrants or investors analyzed risks and costs associated with climate change? What are registrants doing internally to evaluate or project climate scenarios, and what information from or about such internal evaluations should be disclosed to investors to inform investment and voting decisions? How does the absence or presence of robust carbon markets impact firms' analysis of the risks and costs associated with climate change?

What information can be quantified and measured is a fundamental question. Climate activists believe corporations should be required to disclose the magnitude and probability of the financial losses they could incur from the physical impacts of climate change. They also want fossil fuel companies to report the transition and liability risks that they may incur as climate policies devalue and strand their assets and courts compel them to pay compensation to climate change victims.

However, objective quantification and measurement of such risks is usually impossible. Climate risk assessments typically depend on multiple assumptions fraught with uncertainties, and are of little financial value to investors. Boston University professor Madison Condon's paper *Market Myopia's Climate Bubble* has been influential.⁷ Even though she is advocating for mandatory disclosure and quantification of climate change risks, Condon is honest about the myriad challenges:

Evaluating climate risk involves forecasting macroeconomic energy demand, guessing on the success of carbon regulation and future technologies, modeling the relationship between atmospheric gas concentrations and global temperatures, predicting how temperature rise will change the earth's climate systems, and calculating how those changes impact physical economic assets. The task requires skills beyond that of a typical financial analyst, colossal amounts of data, and models that have only begun to be built. Each step of estimation adds layers of uncertainty to risk projections. In some cases, particularly those longer-term and macroeconomic, the estimation of the economic impact of climate change may be dwarfed by this uncertainty.

Sometimes it is these very activists who are creating the risks to businesses. How are companies to assess the uncertainty arising from the political system itself and the actors in it? "No amount of regulatory or corporate governance intervention can give shareholders and managers the ability to foresee the future—the outcomes of national elections, for example, are both largely uncertain and hugely influential in determining the strength of future climate policy." Condon therefore cautions against an "overemphasis on false precision provided by complicated models."

⁷ ["Market Myopia's Climate Bubble,"](#) Madison Condon, *SSRN*, May 15, 2021.

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Further, the climate disclosure movement is not merely a disinterested participant in solving the “problem” of reducing climate risk but an active contributor to raising political risks themselves. By advocating for policies, however unrealistic, to get rid of fossil fuels or to increase the regulatory burden on them, they are the source of many of the risks they purport to address. Some of these activists seek to deny access to capital through agencies such as SEC by pressuring financial institutions and attempting to strand the very assets they purport to be so worried about on behalf of investors. It is unlikely they have the best interests of investors in mind as much as a particular political agenda. SEC should not involve itself in these efforts to defund the energy that supplies over 80% of the world’s energy needs.

3. What are the advantages and disadvantages of permitting investors, registrants, and other industry participants to develop disclosure standards mutually agreed by them? Should those standards satisfy minimum disclosure requirements established by the Commission? How should such a system work? What minimum disclosure requirements should the Commission establish if it were to allow industry-led disclosure standards? What level of granularity should be used to define industries (e.g., two-digit SIC, four-digit SIC, etc.)?

Enabling voluntary disclosure and industry-specific sectors to develop mutually agreed-upon standards is preferable to a one-size-fits-all approach from SEC. With disclosure and ESG reporting in their infancy compared to well-established financial disclosures, it is better for competing systems to continue to evolve before the federal government imposes a bureaucratic straitjacket.

Advocates for regulation, who are rarely the ones regulated that must figure out how to practically comply with red-tape mandates, often argue for one-size-fits-all standards. Such standards are rarely if ever efficient, practical or effective for most situations. In the relatively new realms of ESG and climate disclosure, a single framework would be particularly pernicious, as it would stifle innovation and the search for the best metrics, reporting mechanisms, and methodologies. Multiple competing and evolving systems are much preferable in new fields. From competition arises to the top the best solutions.

Multiple industries and groups of consumers already operate successfully under competing voluntary frameworks. There are voluntary certifications in various fields, such as organic, sustainable seafood, and kosher in the food industry. The oil and natural gas industry has banded together under the Environmental Partnership to commit to methane emissions reduction targets and share best practices and technology to achieve those goals. It is far too premature to settle on one framework in the climate disclosure space.

4. What are the advantages and disadvantages of establishing different climate change reporting standards for different industries, such as the financial sector, oil and gas, transportation, etc.? How should any such industry-focused standards be developed and implemented?

The types of information contemplated for disclosure are very industry-specific, as noted by Prof. Condon. The volume of data and complexity of measurement argue in favor of industry-specific

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approaches rather than a one-size-fits-all approach. As to how it should be developed and implemented, systems are already evolving that should be allowed to continue progressing.

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

At this point, SEC should continue to let these groups work through ESG and disclosure issues as laboratories enabling the best solutions to rise to the top. At the point in the future when adopting a standard would be more judicious, SEC should do so only after engaging in a rigorous public process drawing upon the work of such groups that has been shown to be reasonable, flexible, and practical. Many oil and natural gas companies have been successful reporting under the SASB and TCFD frameworks, as they have reasonable metrics and flexibility to account for differences in companies and their operations.

6. How should any disclosure requirements be updated, improved, augmented, or otherwise changed over time? Should the Commission itself carry out these tasks, or should it adopt or identify criteria for identifying other organization(s) to do so? If the latter, what organization(s) should be responsible for doing so, and what role should the Commission play in governance or funding? Should the Commission designate a climate or ESG disclosure standard setter? If so, what should the characteristics of such a standard setter be? Is there an existing climate disclosure standard setter that the Commission should consider?

We are concerned about outside organizations being charged with administering any disclosure framework or setting standards, as they lack democratic accountability and reliable standards themselves. Outsourcing rulemaking or compliance would raise considerable questions of authority and due process.

7. What is the best approach for requiring climate-related disclosures? For example, should any such disclosures be incorporated into existing rules such as Regulation S-K or Regulation S-X, or should a new regulation devoted entirely to climate risks, opportunities, and impacts be promulgated? Should any such disclosures be filed with or furnished to the Commission?

As discussed above, it is premature for SEC to regulate when many different actors, from companies to shareholder activists, are working together on developing meaningful systems of climate disclosure. Since the science, quantification methods, value judgements and other issues surrounding disclosure are highly complex, it is better to let systems evolve rather than to regulate at this time. We would suggest that it be furnished. They've seen furnished before.

8. How, if at all, should registrants disclose their internal governance and oversight of climate-related issues? For example, what are the advantages and disadvantages of requiring disclosure concerning the connection between executive or employee compensation and climate change risks and impacts?

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Companies should not have to disclose their internal governance. SEC does not have the authority to dictate compensation or require it be tied to climate disclosure. Some companies indeed are choosing to tie compensation to various climate and ESG metrics, as they have determined that it attracts certain investors. In that case, the market is working effectively and SEC does not have to insert itself into that virtuous dynamic. SASB in particular provides an effective framework for such governance issues. As companies are voluntarily and in partnership with shareholders disclosing ESG metrics such as compensation, SEC does not need to make mandatory what the marketplace is already providing.

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

We would answer this question similarly to our response to question 3 in that as the climate disclosure and ESG fields are in their relative infancy, now is not the time to ossify into-one-size-fits-all systems, metrics, reporting requirements, etc. when that complex challenge is better addressed through competing systems. That comment is amplified when moving beyond the national to the global realm. Inflexible standards at the global level among nations with varying levels of development, different economic systems, and a multitude of other variables would be exponentially more problematic.

10. How should disclosures under any such standards be enforced or assessed? For example, what are the advantages and disadvantages of making disclosures subject to audit or another form of assurance? If there is an audit or assurance process or requirement, what organization(s) should perform such tasks? What relationship should the Commission or other existing bodies have to such tasks? What assurance framework should the Commission consider requiring or permitting?

We are struck by the complexity of the questions that SEC is asking, each one of which raises myriad issues. Thinking about enforcing these developing standards and disclosures before they are better articulated through academic study, experimentation in company and organizational “laboratories”, collaboration within industry sector groups, and rigorous public rulemaking process seems premature.

11. Should the Commission consider other measures to ensure the reliability of climate-related disclosures? Should the Commission, for example, consider whether management’s annual report on internal control over financial reporting and related requirements should be updated to ensure sufficient analysis of controls around climate reporting? Should the Commission consider requiring a certification by the CEO, CFO, or other corporate officer relating to climate disclosures?

Of course, corporate officers are responsible for reported information in annual reports and other financial disclosures. However, with the uncertainties and the complexity of climate change disclosure

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and the current rudimentary stage of development, officers trying to make honest disclosures for many unknowable variables, scenarios, consequences, etc. that will evolve over time would be subject to a gotcha exercise or be flooded with shareholder litigation. We caution SEC about going down that path too aggressively at this time.

12. What are the advantages and disadvantages of a “comply or explain” framework for climate change that would permit registrants to either comply with, or if they do not comply, explain why they have not complied with the disclosure rules? How should this work? Should “comply or explain” apply to all climate change disclosures or just select ones, and why?

In the interests of maximum flexibility addressed above in question 9, a “comply or explain” framework makes sense. With the vast amounts of information being contemplated for climate disclosure, companies should be able to prioritize some climate and ESG-related priorities over others and explain their rationale. Investors themselves have different priorities and time horizons. With flexibility in disclosure, investors can likewise choose companies that match their priorities. Prof. Condon notes that analysis should focus “on climate risks at the scale of individual corporations and investors and their horizons.”

13. How should the Commission craft rules that elicit meaningful discussion of the registrant’s views on its climate-related risks and opportunities? What are the advantages and disadvantages of requiring disclosed metrics to be accompanied with a sustainability disclosure and analysis section similar to the current Management’s Discussion and Analysis of Financial Condition and Results of Operations?

After letting organic efforts evolve as discussed in our responses to other questions, SEC should only craft rules after a thorough public rulemaking process. Given the complexity of the variables and possible metrics involved, multiple rounds of rulemaking would likely be needed to work through the legal and technical issues surrounding disclosure.

14. What climate-related information is available with respect to private companies, and how should the Commission’s rules address private companies’ climate disclosures, such as through exempt offerings, or its oversight of certain investment advisers and funds?

This question implies that SEC is seeking to expand its authority well beyond its congressional mandate. Just as private companies are not required to report to the SEC, so should they be exempt from any SEC climate disclosure reporting. Likewise, attempting to regulate private companies through their relationship with private equity firms registered as investment advisors with the SEC would be a gross expansion of SEC’s authority well beyond any contemplated by Congress.

15. In addition to climate-related disclosure, the staff is evaluating a range of disclosure issues under the heading of environmental, social, and governance, or ESG, matters. Should climate-related requirements be one component of a broader ESG disclosure framework? How should the Commission craft climate-related disclosure requirements that would complement a broader ESG disclosure standard? How do climate-related disclosure issues relate to the broader spectrum of ESG disclosure issues?

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Western Energy Alliance & USOGA

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Significantly extending the agency's rulemaking into climate disclosure is already an example of mission creep. Implementing a comprehensive ESG disclosure framework would be yet another step into redefining the mission of the Commission without congressional authority. As with many aspects of climate disclosure, reasonable, well-informed individuals have fundamental disagreements in this policy area, which is best left to the democratic process embodied in Congress, not by expanding the scope of SEC.

Our associations appreciate the opportunity to comment. We hope the questions are indeed sincere and do not imply SEC is intending to so vastly expand its authority as to entirely upend the normal regulation and functioning of the financial system. There are those who are advocating for SEC and other agencies to use the power of the federal government to deny the oil and natural gas industry access to capital. As the economy and indeed our entire modern society would cease to function without fossil fuels, we urge SEC not to succumb to such pressure.

Sincerely,



Kathleen M. Sgamma
President
Western Energy Alliance



Timothy Stewart
President
U.S. Oil & Gas Association