Ocean Conservancy

WRITTEN TESTIMONY OF
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PROTECTING INVESTORS AND ENSURING FAIR, EFFICIENT MARKETS VIA CLIMATE RELATED RISK DISCLOSURES

UNITED STATES SENATE CLIMATE CHANGE TASK FORCE

August 2, 2022

Thank you, Senator Markey and Members of the Climate Change Taskforce, for inviting me to share testimony today. My name is Aarthi Ananthanarayanan, and I am the Director of the Climate and Plastics Initiative at Ocean Conservancy. I am thrilled to have the opportunity to speak about the United States Securities and Exchange Commission's (SEC) proposed rule to enhance and standardize climate-related disclosures for investors.

Ocean Conservancy works to ensure a healthy ocean, protected by a more just world. Along our coasts, climate risk is already real for far too many Americans and businesses coping with severe storms, rising seas, and changing ecosystems. We support improved disclosure because it equips investors to make informed decisions that benefit coastal economies, communities, and the ocean.

As my colleagues have highlighted, the SEC's proposal responds to investor demand for more transparency and clear disclosure guidelines about climate risk and creates a level playing field for companies.

I want to highlight an aspect of climate-related financial risk that isn't covered in the proposed rule: the impact of corporate activities on people and communities, particularly disadvantaged communities that are disproportionately impacted by climate change.

Companies face fierce community resistance and jeopardize their businesses when they don't sufficiently consider the effects of their activities on communities, particularly where climate impacts and threats to health, safety and livelihoods intersect.

Ocean Conservancy recently worked as part of a coalition of groups – including the Action Center on Race and Economy, Amazon Watch, and First People's Worldwide – to develop case studies of companies in a range of industries, market cap types, and scales of operations facing the financial fallout from these climate-related risks. We found evidence of earnings shortfalls, debt rating downgrades, declines in share price, and destruction of shareholder value.[1] Investors need to understand this risk.

[1] Action Center for Race the Economy, Amazon Watch, Ocean Conservancy et al. (2022, June 16). Letter to Chair Gensler Re: Proposed Rule "The Enhancement and Standardization of Climate-Related Disclosures for Investors". https://www.sec.gov/comments/s7-10-22/s71022-20131574-301940.pdf

Take the Dakota Access Pipeline. The Standing Rock Sioux Tribe challenged Energy Transfer LP over the pipeline's potential to endanger drinking water and cultural resources, protests that fueled a public outcry about the project's climate impacts. As a result, project costs tripled, and Energy Transfer experienced a long-term decline in value.[2] This is not an isolated example. Over the last decade, Indigenous-led resistance has stopped or delayed at least 14 fossil fuel projects in the U.S. and Canada.[3]

Extreme weather, driven by climate change, obviously creates risks for a company's physical assets. It also intensifies the risks to community and worker health and safety. A good example is increased flooding that endangers toxic waste sites. In North Carolina, Duke Energy Corporation faces upwards of $10 billion in settlement and clean-up costs after community groups sued the company over claims of leaking toxic pollution from coal ash ponds at risk from flooding.[4]

We can see in these examples how community impacts factor into climate-related financial risk, and we know that this information is important to investors:

- For example, the guidelines developed by the Task Force for Climate-Related Financial Disclosures, supported by hundreds of U.S. corporate and financial institutions, highlight negative stakeholder perceptions as a component of climate-related financial risk.[5]
- And a recent survey of retail investors conducted by Americans for Financial Reform found that 64% of investors prefer companies that disclose their ESG criteria and practices. In the same poll, almost half of those investors said they would factor into their investment decisions a company's record on environmental justice, Indigenous rights, and impacts on communities, if that information were standardized, free, and easy to find.[6]

This is the aim of the SEC's proposed rule: it ensures that investors get the comparable, consistent, and reliable data that they need to make sound financial decisions. In the attached comment letter, signed by 123 environmental, Indigenous rights, and racial justice organizations, we have laid out several more case studies detailing the climate-related financial risks associated with community impacts, along with recommendations to strengthen the proposed rule.

I want to close with one more example of particular relevance to our ocean and coastal communities – and one that helps us understand how all of these aspects of climate-related financial risk come together.

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[2] Fredericks, C. F., Meaney, M., Pelosi, N., & Finn, K. R. (2018). Social cost and material loss: The Dakota Access Pipeline. First Peoples Worldwide. https://www.colorado.edu/program/fpw/sites/default/files/attached-files/social_cost_and_material_loss_0.pdf

[3] Goldtooth, D., & Saldamando, A. (2021). Indigenous resistance against carbon. Indigenous Environmental Network and Oil Change International. https://www.ienearth.org/wp-content/uploads/2021/09/Indigenous-Resistance-Against-Carbon-2021.pdf

[4] Action Center for Race the Economy, Amazon Watch, Ocean Conservancy et al. (2022, June 16). Letter to Chair Gensler Re: Proposed Rule "The Enhancement and Standardization of Climate-Related Disclosures for Investors". https://www.sec.gov/comments/s7-10-22/s71022-20131574-301940.pdf

[5] Task Force on Climate Related Financial Disclosures. (2017, June 15). Final report: Recommendations of the Task Force on Climate-Related Disclosures. https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf

[6] Americans for Financial Reform Education Fund & Public Citizen. (2022). Results of a nationwide survey: Retail investors' support for the SEC mandating climate-related financial disclosures from public companies. Americans for Financial Reform. https://ourfinancialsecurity.org/wp-content/uploads/2022/04/Report_Climate-Disclosure-Survey-Results_AFR-PC-2-1.pdf

- The plastic production industry along the U.S. Gulf Coast is highly exposed to climate-driven extreme weather as well as volatile oil and gas markets. The industry produces significant greenhouse gas emissions all along the value chain, not to mention the growing attention on virgin plastic production as a source of demand for oil and gas. [7]
- In Louisiana, Formosa Petrochemical Corporation is facing significant opposition to a new plastics complex projected be the largest new single source of greenhouse gas emissions in the U.S. It would double toxic air pollution in St. James Parish, a predominantly Black community on the front lines of climate change. Rise St. James has led opposition to the project, drawing widespread public support and international media attention, and the company is now facing higher costs, greater regulatory scrutiny, and damage to its reputation.[8]

Climate risk is a financial reality. As we see in this example and countless others, community impacts are a critical aspect of climate-related financial risk with serious consequences for a company's performance. By requiring transparency about how public companies make decisions that affect the future of their businesses, the SEC is fulfilling its mission to protect investors. Only then can investors make informed decisions and work together with companies as we move through a climate transition that sustains American jobs, our communities, and our economy.

Attached:

- Letter to Chair Gensler re: Proposed Rule "The Enhancement and Standardization of Climate-Related Disclosures for Investors" signed by Ocean Conservancy, Action Center on Race and the Economy, and Amazon Watch, along with 120 environmental, Indigenous rights, and racial justice organizations (June 16, 2022).

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[7] Ocean Conservancy, Americans for Financial Reform and Public Citizen. (April 2022). Reliable Scope 3 Emissions Disclosures are Key to Addressing Climate-Related Financial Risks. https://oceanconservancy.org/climate/publications/reliable-scope-3-emissions-disclosures-key-addressing-climate-related-financial-risks/

[8] Action Center for Race the Economy, Amazon Watch, Ocean Conservancy et al. (2022, June 16). Letter to Chair Gensler Re: Proposed Rule "The Enhancement and Standardization of Climate-Related Disclosures for Investors". https://www.sec.gov/comments/s7-10-22/s71022-20131574-301940.pdf

June 16, 2022

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

Re: Proposed Rule "The Enhancement and Standardization of Climate-Related Disclosures for Investors" ("Proposal")

Dear Chair Gensler:

We write to you as 123 environmental, Indigenous rights, and racial justice organizations committed to educating the public and decision-makers about the need for greater transparency around climate-related financial risks. We strongly support the Proposal of the Securities and Exchange Commission ("the Commission") to require mandatory, standardized, climate-related disclosures from public companies. The Taskforce on Climate-Related Disclosures (TCFD), supported by over 345 U.S. organizations, highlighted in its 2016 report that "one of the most significant, and perhaps most misunderstood, risks that organizations face today relates to climate change."[1] Investors need companies to disclose their climate-related financial risks and strategies for managing them, their greenhouse gas (GHG) emissions, their plans to remain viable or thrive in a low-carbon future economy, and their financial resilience across these dimensions. Voluntary disclosures of climate-related financial risks have not met this need. The Commission has the clear and specific authority as well as the responsibility to remedy this market failure and ensure that investors receive the consistent, comparable, and decision-useful information they need to assess public companies' climate-related financial risks.

This Proposal is an imperative first step in fulfilling the Commission's investor protection mandate with respect to climate-related financial risks. **However, the Proposal fails to consider the need for disclosure of one important indicator of climate-related financial risks: the adverse community consequences[2] of corporate activities.** Climate-related financial risks and opportunities cannot be considered in isolation of these social factors, as they often intersect and amplify one another. If registrants fail to evaluate the adverse community consequences of their regular business operations, climate mitigation efforts, or transition activities, they risk misrepresenting the scale and financial impact of identified climate-related financial risks and

[1] Task Force on Climate-Related Financial Disclosures. (2016). *Recommendations of the Task Force on Climate-related Financial Disclosures.*, ii.
https://assets.bbhub.io/company/sites/60/2020/10/16_1221_TCFD_Report_Letter.pdf
[2] Adverse "community consequences" or "consequences to communities" are defined in more detail on p. 3 of this letter, and include human rights abuses, infringement of Indigenous rights, threats to livelihoods, and negative health impacts.

opportunities to investors. As several of this letter's signatories argued in a previous letter, registrants face myriad financial risks as a result of their negative impacts on communities, including:

- Reputational risks: arising from the local, national and/or international negative publicity caused by the exposure of human rights abuse, deforestation, and pollution.
- Legal risks: such as the possibility of court decisions requiring a corporation to pay damages to affected communities or workers or to regress to an earlier stage in the development of the project and properly consult the communities affected; lawsuits resulting from human rights abuses committed in connection with projects and activities; and legal cases before international legal institutions.
- Political risks: such as laws that outlaw certain corporate activities; cancellation of permits following protests; legislative developments to strengthen community rights; and changes in government that lead to increased regulatory and enforcement action to protect people from industrial pollution.
- Operational risks: stemming from community protests and blockades, which may delay or even permanently obstruct a project, or render necessary inputs inaccessible.[3]

To address this failure, we provide a summary of recommendations starting on p. 9 below. We would prioritize changes in the final rule focused on:

- Revisions to the definitions of chronic physical risks and transition risks to incorporate intersectional community issues that may amplify identified climate risks.
- The inclusion of additional examples of physical risk, transition risk, and climate-related opportunities in the preamble to the final rule that draw on the themes from the case studies presented in this letter.

(1) Including discussion of the impacts of corporate activities on communities would significantly alter the 'total mix' of information made available to investors

The Proposal mandates that registrants "describe any climate-related risks reasonably likely to have a material impact on the registrant, including on its business or consolidated financial statements, which may manifest over the short, medium, and long term" (FR at 21467). The adverse community consequences of corporate activities can increase the legal, operational, political, and reputational climate-related financial risks faced by registrants and therefore constitute a significant aspect of the "total mix" of information that investors would need to assess identified risks and opportunities. Registrants are depriving investors of decision-useful

[3] 350.org et al. (2021, June 14). *Letter to Chair Gensler Re: Response to Call for Public Input on Climate Change Disclosures from Commissioner Allison Herren Lee.* https://www.sec.gov/comments/climate-disclosure/cll12-9061308-246408.pdf

information if they do not provide adequate disclosures of these community impacts and a registrant's efforts to address them.

To understand and account for these risks, investors need registrants to evaluate and disclose current allegations of and potential liabilities stemming from the adverse community consequences ("community consequences") of regular business operations, climate mitigation efforts, or transition activities ("corporate activities"). "Community consequences" are defined as:

- abuses and/or disrespect of human rights as enshrined in international treaties and conventions;[4]
- abuses and/or disrespect of Indigenous and tribal peoples' rights, as enshrined in international treaties and conventions,[5] including the core right to self-determination, respect for which is often measured through a process of Free, Prior, and Informed Consent (FPIC);[6]
- threats to livelihoods,[7] community resilience,[8] infrastructure, food, and/or water access due to a registrant's GHG emissions; physical risks; transition risks; and/or other corporate climate-related impacts, such as land use change, deforestation, ecosystem degradation, and overuse of or damage to natural resources;
- damages to public and/or worker health and safety caused by identified physical risks, GHG emissions, and associated pollution hazards (e.g., releases of toxic chemicals, air, and water pollution), and/or inadequate safety precautions; and

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[4] See, for example: United Nations. (1948). *United Nations Declaration on Human Rights.*

[5] See, for example: United Nations. (2007). *United Nations Declaration on the Rights of Indigenous People;* and International Labor Organization. (1989). I*ndigenous and Tribal Peoples Convention.* https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312314

[6] "Free, Prior and Informed Consent (FPIC) is a specific right that pertains to indigenous peoples and is recognised in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). It allows them to give or withhold consent to a project that may affect them or their territories. Once they have given their consent, they can withdraw it at any stage. FPIC enables them to negotiate the conditions under which the project will be designed, implemented, monitored and evaluated. This is also embedded within the universal right to self-determination." Food and Agricultural Organization of the United Nations. (2022). *Free, Prior and Informed Consent.* https://www.fao.org/indigenous-peoples/our-pillars/fpic/en/

[7] "A livelihood comprises the capabilities, assets (including both material and social. resources) and activities required for a means of living." From: UNDP International Recovery Platform. (2010). *Guidance Note on Recovery: Livelihood.* https://www.unisdr.org/files/16771_16771guidancenoteonrecoveryliveliho.pdf

[8] A 2017 review of how the term 'community resilience' is used found that "[T]here was no evidence of a common, agreed definition," but "the core elements were: local knowledge, community networks and relationships, communication, health, governance and leadership, resources, economic investment, preparedness, and mental outlook." From: Patel, S. S., et al. (2017). What do we mean by 'community resilience'? A systematic literature review of how it is defined in the literature. *PLoS currents, 9*. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5693357/

- disruption of local economies due to climate-driven infrastructure failure,[9] reduction of services,[10] relocation of businesses,[11] and worker dislocation.[12]

Beginning on p. 9, and in response to the questions below, we provide recommendations on additional disclosures to improve identification and assessment of climate-related risks and opportunities, metrics, and risk management processes across registrant's business operations, subsidiaries, and value chains. The brief examples below demonstrate how community consequences can intersect with climate-related physical and transition risks and opportunities with financial implications for registrants. **Detailed case studies are included in our responses to questions, and we recommend that the Commission draw on the themes of the examples provided to improve the final rule.**

Climate-related physical risks such as increasing heat, flooding, wildfires, and extreme weather can increase the legal and operational risks faced by registrants for pollution control and worker and community health and safety. For example, recent research has shed light on increasing climate-driven flood risk to toxic waste sites[13,14] and the likelihood it will exacerbate environmental justice issues.[15] Successful litigation brought by community groups in North Carolina against Duke Energy Corporation over claims of toxic pollution from leaking coal ash containments demonstrates how physical risks (increased flooding) and community health and safety concerns intersect. Duke Energy Corporation faces upwards of $10 billion in settlement and clean-up costs as a result. (Full case study, pp. 33-34 with accompanying citations). Companies may also face increasing legal, operational, or political risks if they fail to provide adequate safety protections to workers against extreme temperatures, natural disasters, and related releases of toxic pollution. For example, as extreme temperatures become more normal

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[9] For example, see Koks, E., Pant, R., Thacker, S. & Hall, J. (2019). Understanding Business Disruption and Economic Losses Due to Electricity Failures and Flooding. *Int J Disaster Risk Sci, 10,* 421–438. https://doi.org/10.1007/s13753-019-00236-y
[10] For example, see Marquès, M., Bangash, R. F., Kumar, V., Sharp, R., & Schuhmacher, M. (2013). The impact of climate change on water provision under a low flow regime: A case study of the ecosystems services in the Francoli river basin. *Journal of Hazardous Materials*, 263, 224–232. https://www.sciencedirect.com/science/article/pii/S0304389413005281
[11] For example, see Linnenluecke, M. K., Stathakis, A., & Griffiths, A. (2011). Firm relocation as adaptive response to climate change and weather extremes. *Global environmental change*, 21(1), 123–133. https://www.sciencedirect.com/science/article/pii/S0959378010000944
[12] As with flooding-driven job losses; see, for example, Hallegatte, S., Ranger, N., Mestre, O., Dumas, P., Corfee-Morlot, J., Herweijer, C., & Wood, R. M. (2011). Assessing climate change impacts, sea level rise and storm surge risk in port cities: a case study on Copenhagen. *Climatic change*, *104*(1), 113–137. https://link.springer.com/article/10.1007/s10584-010-9978-3
[13] Colman, Z. (2019, September 26). The toxic waste threat that climate change is making worse. *Politico*. https://www.politico.com/story/2019/08/26/toxic-waste-climate-change-worse-1672998
[14] Gomez, J. A. (2021, May 13). *Superfund: EPA should take additional actions to manage risks from climate change effects.* Government Accountability Office. https://www.gao.gov/products/gao-21-555t#:~:text=Climate%20change%20may%20make%20some,change%20on%20nonfederal%20NPL%20sites.
[15] Sustainability and Health Equity Lab, University of California at Berkeley. (n.d.). *Toxic tides: Sea level rise, hazardous sites, and environmental justice in California.* https://sites.google.com/berkeley.edu/toxictides/home

and worker deaths and serious injuries due to heat stress rise, registrants may be confronted with new policies aimed at protecting worker safety.[16]

Climate-related transition risks: Disregard for community consequences runs counter to investor and corporate commitments to mitigate climate risk: addressing social injustices and respecting the inherent rights of Indigenous peoples have been shown to be important strategies for protecting forest and ecosystem biodiversity,[17] critical for stabilizing the climate and protecting the forest and food supply chains that depend on them.[18] As demonstrated in the examples of JBS, GeoPark, and Energy Transfer LP in question 10, below, companies that disrespected Indigenous rights, drove deforestation of high-value forests, and degraded natural resources vital to surrounding communities faced significant financial consequences that may have put investors at risk.

Further, Black, Indigenous, Latinx, Asian-American and Pacific Islander, and other local communities across the globe are leading fierce resistance movements against companies that exacerbate climate change, disrespect Indigenous rights, and threaten public health, safety, environmental quality, and/or livelihoods. As demonstrated in the case studies included in Question 10 on GeoPark, Formosa Petrochemical Corporation, and Energy Transfer LP, companies facing these resistance movements experienced major cost overruns and declines in stock prices, reported impairments, and lost investors and customers amid reputational damage and boycotts. Over the last decade, Indigenous-led resistance has stopped or delayed at least 14 fossil fuel projects in the U.S. and Canada – preventing or delaying GHG emissions equivalent to at least one-quarter of annual U.S. and Canadian emissions.[19]

In the transition to a clean energy economy, registrants in GHG-intensive and extractive industries will likely face public and local community resistance that delays or derails projects, resulting in often underestimated and under-disclosed operational, legal, political, and

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[16] Dahl, K., & Licker, R. (2021, August 17). Too hot to work. *Union of Concerned Scientists.* https://ucsusa.org/resources/too-hot-to-work

[17] IPCC. (2022). Summary for Policymakers. In Pörtner, H.O., Roberts, D.C., Poloczanska, E.S., Mintenbeck, K., Tignor, M., Alegría, A., Craig, M., Langsdorf, S., Löschke, S., Möller, V. & Okem, A. (eds.), *Climate Change 2022: Impacts, adaptation, and vulnerability,* 31 & 34. Cambridge University Press. In Press. Also available at https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_SPM_version_report_LR.pdf

[18] Fa, J. E., Watson, J. E.M., Leiper, I., Potapov, P., Evans, T. D., Burgess, N. D., Molnár, Z., Fernández-Llamazares, A., Duncan, T., Wang, S., Austin, B. J., Jonas, H., Robinson, C. J., Malmer, P., Zander, K. K., Jackson, M. V., Ellis, E., Brondizio, E. S., & Garnett, S. T. (2020). Importance of Indigenous Peoples' lands for the conservation of Intact Forest Landscapes. *Frontiers in Ecology and the Environment, 18*(3), 135–140. https://doi.org/10.1002/fee.2148

[19] Goldtooth, D., & Saldamando, A. (2021). *Indigenous resistance against carbon.* Indigenous Environmental Network and Oil Change International. https://www. ienearth.org/wp-content/uploads/2021/09/Indigenous-Resistance-Against-Carbon-2021.pdf

reputational risks for companies.[20] This transition risk will be amplified if a registrant's activities have significant community consequences.

Finally, the connection between climate change litigation, human rights, and policy risk cannot be ignored. The cumulative number of climate change litigation cases across the world has more than doubled since 2015, with a growing number focused on human rights arguments; this litigation has increasingly become an instrument used to enforce or enhance climate commitments made by governments.[21] While many of these cases are occurring outside of the U.S., their impact will nonetheless be felt by large multinationals with a presence in U.S. capital markets. Any assessment of legal and political risks is incomplete without disclosure of the human rights implications of corporate activities.

Climate-related opportunities: Finally, similar evaluation of community consequences is necessary for companies taking advantage of climate-related opportunities. The positive financial impact of climate-related opportunities may be significantly tempered if they carry substantial community consequences, for the reasons described above. As demonstrated by the examples in question 18 below, many climate-related opportunities have significant community consequences that may limit the financial benefit to registrants if not addressed. For example, several mining projects for minerals to support clean energy development have run into conflicts with Indigenous rights and have been challenged for failure to obtain FPIC from local communities (see full case study on pp. 43-43 with citations). Cordillera Azul National Park forest offset project in the Peruvian Amazon is facing legal challenges due to lack of prior consent from Indigenous groups, putting purchasers and investors at risk (see full case study on p. 42 with citations). Active Energy's planned coal-replacement wood pellet facility in North Carolina was successfully challenged by local communities for alleged failure to account for local pollution impacts and value chain GHG emissions resulting in the cancellation of the facility (see full case study on pp. 40-41 with citations).

The case study research presented in this comment letter reveals a remarkable spread and diversity in the examples of identified risk. We found examples occurring across many different communities (geography, demography and ethnicity, etc.) and with companies of varied market cap (large cap, mid cap, small cap, and micro/mini cap); across sectors (petrochemical, oil and gas, infrastructure, etc.); at various scales (single real asset/facility to many assets/facilities); with clear impacts on fixed income (credit downgrades), equity (share price changes), and company financials (lost earnings).

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[20] Davis, R., & Franks, D. M. (2014). *Costs of Company-Community Conflict in the Extractive Sector* (Corporate Social Responsibility Initiative Report No. 66). Harvard Kennedy School. http://www.csrm.uq.edu.au/media/docs/603/Costs_of_Conflict_Davis-Franks.pdf.

[21] Setzer, J., & Higham, C. (2021). *Global trends in climate change litigation: 2021 snapshot.* Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy. https://www.cccep.ac.uk/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation_2021-snapshot.pdf

(2) Climate change accelerates social and economic inequities and may affect the functioning of markets and capital formation

Disclosure of the community consequences of corporate activities will support the SEC in its mission[22] of maintaining fair, orderly, and efficient markets and facilitating capital formation. Climate change acts as a powerful accelerant to existing injustices and vulnerabilities, destabilizing the broader socioeconomic systems upon which capital markets depend.[23] People of color and lower income households already face higher levels of toxic pollution from decades of racist and inequitable housing, lending, and zoning policies; they are also more likely to face harm from extreme weather and other climate impacts to infrastructure, public health, and local economies. According to a recent study by the U.S. Environmental Protection Agency (EPA), Black individuals in the U.S. are 40 percent more likely to live in areas with the highest projected increases in mortality rates due to climate-driven changes in extreme temperatures. Hispanic and Latinx individuals are 43 percent more likely to live in areas with the highest projected labor hour losses in weather-exposed industries. American Indian and Alaska Native individuals are 48 percent more likely to live in areas where the highest percentage of land is projected to be inundated due to sea level rise.[24] This will have implications across the market and for individual registrants because inequality has been shown to depress economic growth. In the U.S., from 1990 to 2010, rising inequality reduced growth by about five percentage points per capita.[25]

(3) Investors see the value of this information and are making increasing commitments and taking more actions to reduce the adverse community consequences of corporate activities, alongside climate targets and goals.

The rapid growth and mainstreaming of environmental, social, and governance (ESG) investing demonstrates that investors already see the interconnection between a company's financial performance, climate risks, and social risks. This is evidenced both by the record inflows into ESG funds in 2021 (now approximately 10% of worldwide fund assets),[26] as well as recent regulatory efforts in the E.U. and U.S. toward a standardized ESG terminology.[27] The proportion

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[22] Securities and Exchange Commission. (n.d.). *About the SEC*. Retrieved June 13, 2022 from https://www.sec.gov/about.shtml

[23] Christie, D., Clark, M., & Noyes, E. (2021). Investing for climate justice: an intersectional approach. *Cambridge Associates.* https://www.cambridgeassociates.com/insight/investing-for-climate-justice-an-intersectional-approach/

[24] Environmental Protection Agency Office of Atmospheric Programs. (2021). *Climate change and social vulnerability in the United States: A focus on six impacts* (EPA Report No. 430-R-21-003). www.epa.gov/cira/social-vulnerability-report

[25] OECD. (2014, September 12). Inequality hurts economic growth, finds OECD research. *OECD Newsroom.* https://www.oecd.org/newsroom/inequality-hurts-economic-growth.htm

[26] Kerber, R. & Jessup, S. (2021, December 23) Analysis: How 2021 became the year of ESG investing. *Reuters.* https://www.reuters.com/markets/us/how-2021-became-year-esg-investing-2021-12-23/

[27] Lee, L.-E., & Eastman, M. T. (2021). *2022 ESG Trends to Watch*. MSCI. https://www.msci.com/documents/10199/9d2eeece-c2db-3d86-873f-faaac8cd62ef

of managed assets applying various environmental, social, and governance (ESG) criteria in their investment analysis and portfolio selection has grown exponentially since 2012.[28] This growth is accompanied by demand for better data: a recent poll found that 64% of investors prefer to invest in companies that disclose their ESG criteria and practices, and 48% of investors indicated that they would factor corporations' records on environmental justice, Indigenous rights, and impacts on communities into their investment decisions if that information were "standardized, free, and easy to find."[29]

The growing number of shareholder proposals and investor commitments related to community impacts, environmental justice, and Indigenous rights demonstrates this investor interest. At Citigroup,[30] Wells Fargo,[31] and Bank of America's[32] Annual General Meetings on April 26, 2022, resolutions were introduced requiring the banks to report on practices respecting Indigenous peoples' rights. They received 34.3%, 26%, and 34% of shareholder support, respectively.[33] The World Bank has recognized the linkage between environmental and human impacts since 2016, when it adopted an Environmental and Social Framework that outlines requirements for funded projects, including FPIC, as well as human rights, labor, health, and community engagement.[34] In 2022 BlackRock released a commentary outlining why human rights are an investment issue and encouraging companies to adopt responsible business practices, including FPIC.[35] 132 financial institutions and banks have adopted the Equator Principles for evaluation and management of environmental and social risks,[36] recognizing their

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[28] US SIF Foundation. (2020). *Report on US sustainable and impact investing trends 2020*. US SIF. https://www.ussif.org/files/Trends%20Report%202020%20Executive%20Summary.pdf

[29] Americans for Financial Reform Education Fund & Public Citizen. (2022). *Results of a nationwide survey: Retail investors' support for the SEC mandating climate-related financial disclosures from public companies*. Americans for Financial Reform. https://ourfinancialsecurity.org/wp-content/uploads/2022/04/Report_Climate-Disclosure-Survey-Results_AFR-PC-2-1.pdf

[30] Citigroup Inc. (2022). *2022 Notice of Annual Meeting and Proxy Statement.* Citigroup Inc. https://www.citigroup.com/citi/investor/quarterly/2022/ar22p.pdf

[31] Wells Fargo. (2022). *Notice of Annual Meeting and Proxy Statement*: *Wells Fargo & Company 2022 Annual Meeting of Shareholders.* Wells Fargo & Company. https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2022-proxy-statement.pdf

[32] Bank of America. (2022). 2*022 Annual meeting of shareholders*. Bank of America. https://investor.bankofamerica.com/events-and-presentations/annual-shareholder-meeting#:~:text=Our%202022%20annual%20meeting%20of,remote%20communication%20via%20audio%20webcast.

[33] Stop the Money Pipeline. (2022, April 26). *Stop the Money Pipeline Coalition Members Respond to Climate Votes at Bank of America, Citi, Wells Fargo Shareholder Meetings* [Press Release]. https://stopthemoneypipeline.com/climate-votes-agms-2022/

[34] World Bank. (2016). *Fact Sheet: The World Bank's new environmental and social framework.* World Bank Group. https://thedocs.worldbank.org/en/doc/748391470327541124-0290022016/original/SafeguardsFactSheetenglishAug42016.pdf

[35] BlackRock, Inc. (2022). *Our approach to engagement with companies on their human rights impacts: Investment stewardship.* BlackRock, Inc. https://www.blackrock.com/corporate/literature/publication/blk-commentary-engagement-on-human-rights.pdf

[36] Equator Principles. (n.d.). *Members and reporting: Equator Principles Financial Institutions (EPFIs) and their annual reporting on EP-related activities*. Retrieved June 6, 2022 from https://equator-principles.com/members-reporting/

responsibility to respect Human Rights in line with the United Nations Guiding Principles on Business and Human Rights (UNGPs) as well as the objectives of the 2015 Paris Climate Agreement and the role financial institutions play in improving the availability of climate-related information.[37]

Additionally, attention on environmental justice issues and the need for a just transition is increasing. For example, in 2021 the UK utility SSE published a "Just Transition plan" in response to pressure from shareholders to "help protect workers and communities as the UK moves towards net zero."[38] This pressure will only increase: shareholder advocacy group As You Sow recently revised its scorecard to include a measure of "environmental racism," scoring the environmental impact of S&P 500 member companies on communities of color, using the report as the basis for company engagement and shareholder proposals to be filed in 2022.[39]

Unless registrants are required to disclose the adverse community consequences of corporate activities that intersect with identified climate-related risks and opportunities, investors will continue to suffer from unreliable and incomplete climate-related disclosures.

The Commission can address this need in the final rule by implementing the following recommendations for additional disclosures (summarized here and discussed in detail in responses to questions beginning on p. 12):

1) Revise the definitions included in the final rule as follows [suggested additions in bold and underlined]:
    a. Chronic risks: "'Chronic risks' is defined as those risks that the business may face as a result of longer term weather patterns and related effects, such as sustained higher temperatures, sea level rise, drought, and increased wildfires, as well as related effects such as decreased arability of farmland, decreased habitability of land, decreased availability of fresh water, and <u>**threats to public health and safety, such as extreme heat, poor air quality, reduced food and water quality, changes to infectious disease vectors, and population displacement.**</u>"
    b. Transition risks: "Transition risks are the actual or potential negative impacts on a registrant's consolidated financial statements, business operations, or value chains attributable to regulatory, technological, <u>**social**</u>, and market changes to address the mitigation of, or adaptation to, climate-related risks, such as increased costs

[37] Equator Principles. (2020). *Equator principles: EP4 July 2020*. https://equator-principles.com/app/uploads/The-Equator-Principles_EP4_July2020.pdf
[38] Robinson-Tillett, S. (2020, November 18). Utility publishes first ever 'Just Transition' plan after shareholder pressure. *Responsible Investor.* https://www.responsible-investor.com/utility-publishes-first-ever-just-transition-plan-after-shareholder-pressure/
[39] As You Sow. (August 11, 2021). *Environmental racism metrics added to As You Sow racial justice S&P500 scorecard* [Press Release]. https://www.asyousow.org/press-releases/2021/8/11/environmental-racism-metrics-as-you-sow-racial-justice-scorecard

attributable to changes in law or policy **(including those related to environmental justice, Indigenous rights, protection of ecosystems, and health and safety)**, reduced market demand for carbon-intensive products leading to decreased prices or profits for such products, the devaluation or abandonment of assets, risk of legal liability and litigation defense costs, **increased operational costs due to community protests or protection of public and worker health and safety,** competitive pressures associated with the adoption of new technologies, as well as reputational impacts (including those stemming from a registrant's customers or business counterparties and **changing customer or community perceptions of a registrant's contribution to or detraction from the transition to a lower-carbon economy[40])** that might trigger changes to market behavior, consumer preferences or behavior, and registrant behavior."

2) Require the following additional disclosures to improve identification and assessment of climate-related financial risks and opportunities, metrics, and risk management processes across registrant's business operations, subsidiaries, and value chains:
   - Any and all public or community opposition (campaigns, protests, or resistance movements) related to the registrant's contribution to or detraction from the transition to a lower-carbon economy and connected community consequences[41] that may materially impact the registrant's operations; registrant's responses and actions to address such opposition; and statements from complainants on how they assess the response.
   - Any and all land rights grievances or complaints filed by Indigenous or tribal peoples in the registrant's areas of operations where climate-related financial risks or climate-related opportunities have been identified or significant Scope 1, 2, or 3 GHG emissions are expected, the registrant's responses and actions to address such grievances or complaints, and statements from complainants on how they assess the response.
   - The names of any and all Indigenous peoples or tribal entities that would be impacted by the adverse community consequences of corporate activities related to identified climate-related financial risks and opportunities.
   - A description of any open processes in which the registrant is seeking to consult with or obtain the consent of Indigenous peoples or tribal entities that would be impacted by a planned or in-process activity.

[40] Note: we pull the phrase "shifts in community perceptions of a registrant's contribution to or detraction from the transition to a lower-carbon economy" directly from the definition of reputational risks included in the 2017 Recommendations produced by the Task Force on Climate-Related Disclosures (TCFD). See: Task Force on Climate Related Financial Disclosures. (2017, June 15). *Final report: Recommendations of the Task Force on Climate-Related Disclosures.* https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf
[41] See definition of community consequences, p. 3

- A list of any and all consultation processes carried out in the past reporting year, including information on what entity carried out the consultation, and, if consent was obtained, how the impacted Indigenous peoples or tribal entities expressed that consent.
- A list of any and all legal processes in U.S. and/or foreign jurisdictions related to land rights disputes, consultation or consent processes, or other Indigenous rights matters.
- A list of any and all projects undertaken that require the relocation of local communities, including any and all compensation, monetary or otherwise, provided in exchange for relocation.
- The proximity of identified physical risks to vulnerable communities[42] and sensitive community locations (schools, hospitals, daycare centers, playgrounds, residential areas, etc.).
- The number and locations of all sources of hazardous waste,[43] chemicals,[44] and/or criteria air pollutants[45] owned or operated by registrant that may be impacted by identified physical risks.
- The locations of Scope 1, 2, and 3 GHG emissions over 25,000 metric tons of carbon dioxide equivalent emissions (CO_2e) annually wherever it is feasible (i.e., known or reasonably available according to Securities Act Rule 409 and Exchange Act Rule 12b-21).[46]

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[42] "Vulnerable communities" has no set definition, but Bhatt and Bhatija (2018) list several characteristics that can lead to vulnerability, including lack of access to services; limited economic mobility and or high unemployment; lack of insurance; challenges in accessing services that stem from social, cultural, and/or language barriers; lower literacy and education levels; exposure to environmental hazards ranging from safety to air pollution to lack of access to the outdoors or to exercise. See Bhatt, J., & Bhatija, P. (2018). Ensuring access to quality healthcare in vulnerable communities. *Academic Medicine, 93*(9), 1271–1275. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6112847/

[43] As defined by EPA. (2021, June 16). *Learn the basics of hazardous waste*. https://www.epa.gov/hw/learn-basics-hazardous-waste#hwid. This includes designated Superfund sites under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as well as coal ash ponds managed under the 2015 Coal Combustion Residuals Rule. See: EPA. (2021, November 19). *What is superfund?* https://www.epa.gov/superfund/what-superfund; and EPA. (2021, July 30). *Disposal of coal combustion residuals from electric utilities rulemakings.* https://www.epa.gov/coalash/coal-ash-rule

[44] For example, those managed under the EPA's Risk Management Plan (RMP) Rule (Section 112(r) of the 1990 Clean Air Act amendments). See EPA. (2021, December 20). *Risk Management Plan (RMP) rule.* https://www.epa.gov/rmp

[45] EPA. (2021, August 16). *Criteria air pollutants.* https://www.epa.gov/criteria-air-pollutants.

[46] A 25,000 metric ton limit is appropriate because the EPA has recognized this threshold as qualification for "large" sources of emissions, and such facilities sum to about 85-90% of overall U.S. emissions - thus capturing a majority of the transition risk within the market for at least U.S. emissions. Further using the EPA threshold will ensure registrants incur minimal cost for disclosure and obviate any confusion regarding qualifying sources. See Mandatory reporting of greenhouse gases: A rule by the Environmental Protection Agency, 40 C.F.R. § 98 (2009). https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-98

3) Require the following additional disclosures related to changes in the registrant's business model, transition plan, climate targets and goals, and governance processes for assessing and managing climate-related risks and opportunities:
   - For management positions and committees responsible for oversight of climate-related risks, registrants should disclose any staff experience working on environmental justice issues and Indigenous and tribal peoples' rights, as well as expertise with community engagement and dispute resolution.
   - The adverse community consequences[47] arising from the registrant's business model and transition plan across registrant's business operations, subsidiaries, and value chains.
   - Any targets and goals related to addressing past and current adverse community consequences and ensuring a just transition.[48]

4) The following revisions to the description of elements to be included in transition plans [suggested additions in bold and underlined]:

"• Laws, regulations, or policies that:

o Restrict GHG emissions or products with high GHG footprints, including emissions caps; or

o Require the protection of **<u>biodiversity,</u>** high conservation value land, or natural assets?

o **<u>Protect communities and workers from the impacts of climate change by requiring enhanced pollution controls, protection of Indigenous and tribal peoples' land rights, worker and public safety controls, and mitigation of environmental justice impacts.</u>**

• Imposition of a carbon price.

• Changing demands or preferences of consumers, investors, employees, and business counterparts?

• **<u>Any increase in adverse social conditions such as increasing inequality or shifts in community perceptions of a registrant's contribution to or detraction from the transition to a lower-carbon economy.</u>**

• <u>Processes to identify, address, and repair past and ongoing harms to communities impacted by climate-related risks and transition activities needed to avoid or mitigate political, legal, operational, and reputational risks</u><u>."</u>

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[47] See definition, p. 3 of this letter.

48 According to the International Labour Organization, a "Just Transition" means "greening the economy in a way that is as fair and inclusive as possible to everyone concerned, creating decent work opportunities and leaving no one behind. A Just Transition involves maximizing the social and economic opportunities of climate action, while minimizing and carefully managing any challenges – including through effective social dialogue among all groups impacted, and respect for fundamental labour principles and rights." See International Labour Organization. (2022). *Frequently asked questions on just transition*. https://www.ilo.org/global/topics/green-jobs/WCMS_824102/lang--en/index.htm

Below, we provide detail on the following questions posed in the proposed rule to support enhanced disclosures of anticipated adverse community consequences[49] of corporate activities related to climate risks and opportunities.

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?

A recent survey of institutional investors found that the majority see climate risks that are relevant to their investments today, and 9 in 10 investors are *already* taking measures to incorporate them into their investment decisions.[50] This rule is an important step forward in providing investors with consistent, comparable, and reliable information to evaluate risk and navigate the fundamental market transition underway because of climate change. Further, a recent poll found that 64% of investors prefer to invest in companies that disclose their ESG criteria and practices, and 48% of investors indicated that they would factor in corporations' records on environmental justice, Indigenous rights, and impacts on communities into their investment decisions if that information were standardized, free, and easy to find.[51]

Some aspects of the rule support evaluation of the adverse community consequences[52] of corporate activities that may amplify identified climate-related financial risks. For example, in section 229.1502 (FR at 21467), Strategy, Business Model, and Outlook, the Proposal requires disclosure of the location of physical risks, with additional disclosure required of the location of assets in flood hazard areas and areas of high or extremely high water stress. This location data can be useful to assess whether the identified risks will adversely impact surrounding communities and create increased legal, operational, political, and reputational risks. For example, industrial facilities or toxic waste sites in flood hazard areas are likely to face increased costs for worker safety and public health and may face increased regulatory scrutiny and legal risks if located in areas with vulnerable surrounding populations. Investors can use location data

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[49] Adverse "community consequences," or "consequences to communities" are defined in more detail on p. 3 of this letter, and include human rights abuses, infringement of Indigenous rights, threats to livelihoods, and negative health impacts.
[50] Krueger, P., Sautner, Z., & Starks, L. T. (2020). The Importance of climate risks for institutional investors. *The Review of Financial Studies*, *33*(3), 1067–1111. https://doi.org/10.1093/rfs/hhz137
[51] Americans for Financial Reform Education Fund & Public Citizen. (2022). *Results of a nationwide survey: Retail investors' support for the SEC mandating climate-related financial disclosures from public companies.* Americans for Financial Reform. https://ourfinancialsecurity.org/wp-content/uploads/2022/04/Report_Climate-Disclosure-Survey-Results_AFR-PC-2-1.pdf
[52] Defined on p. 3 of this letter.

to understand the concentration of a registrant's assets in areas with a high risk of stakeholder opposition or policy change.

However, investors also need additional disclosures on how companies *assess, manage, and mitigate* the adverse community consequences that stem from business operations, climate mitigation efforts, and transition activities. A registrant with business operations requiring freshwater will face rising transition risks as increasing droughts create competition for water with surrounding communities (e.g., the current conflict between BlueTriton Brands and the California State Water Board's Division of Water Rights[53]). However, unless the rule requires specific evaluation of the *intersection* of the climate-related financial risks with community consequences, the disclosures required by the proposed rule would not provide investors with sufficient information to assess the full extent of climate-related physical and transition risks and impacts on a registrant's financial performance.

9. Should we define "climate-related risks" to mean the actual or potential negative impacts of climate-related conditions and events on a registrant's consolidated financial statements, business operations, or value chains, as proposed? Should we define climate-related risks to include both physical and transition risks, as proposed? Should we define physical risks to include both acute and chronic risks and define each of those risks, as proposed? Should we define transition risks, as proposed? Are there any aspects of the definitions of climate-related risks, physical risks, acute risks, chronic risks, and transition risks that we should revise? Are there other distinctions among types of climate-related risks that we should use in our definitions? Are there any risks that we should add to the definition of transition risk? How should we address risks that may involve both physical and transition risks?

While we are broadly in alignment with the proposed definitions of climate-related financial risks, they fail to mention the intersection of climate-related financial risks and the adverse community consequences from corporate activities. These climate and social risks amplify each other; investors cannot fully understand the scope and impact of climate-related financial risks on a company's financial performance, business operations, and value chains without understanding those adverse community consequences. Therefore, we suggest the following revisions to the definitions included in the rule:

<u>Physical Risks:</u> With one caveat, we support the Proposal definition of physical risks. The proposed definition of chronic risks lacks mention of chronic threats to public health. Climate change is widely viewed as the greatest threat to public health in recent times,[54] and chronic

[53] Fortin, J. (2021, April 29). Facing droughts, California challenges Nestlé over water use. *New York Times*. https://www.nytimes.com/2021/04/29/us/nestle-water-california.html
[54] Somer, L. (2021, September 7). Climate change is the greatest threat to public health, top medical journals warn. *NPR.* https://www.npr.org/2021/09/07/1034670549/climate-change-is-the-greatest-threat-to-public-health-top-medical-journals-warn

public health threats to workers and surrounding communities from extreme heat, poor air quality, reduced food and water quality, changes to infectious disease vectors, and population displacement[55] are likely to pose ongoing risks to businesses. As demonstrated by the COVID-19 pandemic, public health threats pose significant risks to a registrant's financial performance and mandatory disclosures on this risk would benefit investors and other market participants.

We therefore propose the following revised definition for chronic risks:

> "Chronic risks relate to longer term weather patterns and related effects, such as sustained higher temperatures, sea level rise, drought, and increased wildfires, as well as related effects such as decreased arability of farmland, decreased habitability of land, decreased availability of fresh water, and **threats to public health and safety, such as extreme heat, poor air quality, reduced food and water quality, changes to infectious disease vectors, and population displacement.**"

Transition risks: The proposed definition of transition risk lacks several critical components of transition risk.

- The 2017 recommendations from the Task Force on Climate-Related Disclosures includes in its definition of reputational risk: "community perceptions of an organization's contribution to or detraction from the transition to a lower-carbon economy."[56] This is an important and missing aspect of the proposed definition of transition risk. There is a long history of community resistance against projects and companies that result in environmental injustices. In many GHG-intensive and extractive industries, public opposition to new and existing projects and corporations is increasingly the norm, not the exception. Community resistance and public opposition have led to negative impacts on financial performance and business operations, including the delay or cancellation of projects, loss or delay of permits due to environmental justice concerns, increased regulatory scrutiny and legal challenges to environmental impact statements and permits, and the passage of new regulations that require expensive environmental protection and public health requirements on registrants.[57]
- Rising inequality should be included as an element of transition risk. Climate change and the GHG-intensive activities that contribute to it are accelerating existing disparities in housing, economic opportunity, public health, and safety, as well as the affordability, reliability, and availability of essential services such as electricity, potable water, heat,

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[55] EPA. (2021, December 2). *Climate change indicators: Understanding the connections between climate change and human health*. https://www.epa.gov/climate-indicators/understanding-connections-between-climate-change-and-human-health

[56] Task Force on Climate Related Financial Disclosures. (2017, June 15). *Final report: Recommendations of the Task Force on Climate-Related Disclosures.* https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf

[57] 350.org et al. (2021, June 14). *Letter to Chair Gensler Re: Response to Call for Public Input on Climate Change Disclosures from Commissioner Allison Herren Lee.* https://www.sec.gov/comments/climate-disclosure/cll12-9061308-246408.pdf

and infrastructure. This will have implications across the market and for individual registrants as inequality has been shown to depress economic growth. Rising inequality in the U.S. from 1990 to 2010 reduced growth by about five percentage points per capita over the period.[58]

- Section 229.1503 of the Proposal identifies "the protection of high conservation value land or natural assets" as an important aspect of risk management to be discussed in disclosure of a registrant's transition plan (p. 21468). Both inequality and disrespect of Indigenous and tribal peoples' land rights threaten the resilience of the ecosystems that provide climate stability and resilience for communities and supply chains.[59,60] In the transition to a decarbonized economy, increasing attention will be paid to preserving ecosystems that ensure climate stability – such as forests, peatlands, and mangroves.[61] Investors looking to protect their investments from climate risk and registrants with value chains that depend on these ecosystems need to understand and mitigate the risks to these ecosystems. As several of this letter's signatories argued in a previous letter responding to Commissioner Lee's Request for Information (RFI) in 2021, "Indigenous and tribal peoples are critical to forest conservation and climate stability: studies show that ancestral lands and land under title by Indigenous peoples are the most biodiverse and best conserved on the planet. And a 2019 report on climate change and land use from the Intergovernmental Panel on Climate Change (IPCC) found that agricultural practices which incorporate Indigenous and local knowledge are more effective in adjusting to

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[58] Cingano, F. (2014). Trends in income inequality and its impacts on economic growth. *OECD Social, Employment and Migration Working Papers*, 163. https://read.oecd-ilibrary.org/social-issues-migration-health/trends-in-income-inequality-and-its-impact-on-economic-growth_5jxrjncwxv6j-en#page1

[59] IPCC. (2022). Summary for Policymakers. In Pörtner, H.O., Roberts, D.C., Poloczanska, E.S., Mintenbeck, K., Tignor, M., Alegría, A., Craig, M., Langsdorf, S., Löschke, S., Möller, V. & Okem, A. (eds.), *Climate Change 2022: Impacts, adaptation, and vulnerability* (p. 31, 34). Cambridge University Press. In Press. Also available at https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_SPM_version_report_LR.pdf

[60] Fa, J. E., Watson, J. E.M., Leiper, I., Potapov, P., Evans, T. D., Burgess, N. D., Molnár, Z., Fernández-Llamazares, A., Duncan, T., Wang, S., Austin, B. J., Jonas, H., Robinson, C. J., Malmer, P., Zander, K. K., Jackson, M. V., Ellis, E., Brondizio, E. S., & Garnett, S. T. (2020). Importance of Indigenous Peoples' lands for the conservation of Intact Forest Landscapes. *Frontiers in Ecology and the Environment, 18*(3), 135-140. https://doi.org/10.1002/fee.2148

[61] See, for example, the growth in shareholder resolutions related to deforestation: Ceres. (2021). *Adopt supply chain deforestation policy: 2021 Resolution.* https://engagements.ceres.org/ceres_engagementdetailpage?recID=a0l1H00000BsdKTQAZ; Ceres. (2021, May 19). *A majority vote on strong deforestation and climate policy at Bloomin' Brands continues the rush of* success for climate proposals in 2021 [Press Release]. https://www.ceres.org/news-center/press-releases/majority-vote-strong-deforestation-and-climate-policy-bloomin-brands; Kimbrough, L. (2021, April 13). JP Morgan Chase expanding deforestation policies under shareholder pressure. *Mongabay.* https://news.mongabay.com/2021/04/jpmorgan-chase-expanding-deforestation-policies-under-shareholder-pressure/; Kimbrough, L. (2021, April 13). JP Morgan Chase expanding deforestation policies under shareholder pressure. *Mongabay.* https://news.mongabay.com/2021/04/jpmorgan-chase-expanding-deforestation-policies-under-shareholder-pressure/

deforestation, biodiversity loss, and other challenges."[62] Further, the most recent IPCC report on climate change, when discussing adaptation, identifies addressing social injustices and respecting the inherent rights of Indigenous peoples as critical strategies for protecting forests and other critical ecosystems and their biodiversity.[63] As the number of investor and company commitments to reduce deforestation and mitigate climate-related financial risks increases, companies that have abused or disrespected the human and land rights or safety of Indigenous peoples and local communities will face increasing investor scrutiny, public resistance, and political risks.

Therefore, we recommend the following revision to the definition of transition risk:

"Transition risks are the actual or potential negative impacts on a registrant's consolidated financial statements, business operations, or value chains attributable to regulatory, technological, **social**, and market changes to address the mitigation of, or adaptation to, climate-related risks, such as increased costs attributable to changes in law or policy **(including those related to environmental justice, Indigenous rights, protection of ecosystems, and health and safety)**, reduced market demand for carbon-intensive products leading to decreased prices or profits for such products, the devaluation or abandonment of assets, risk of legal liability and litigation defense costs, **increased operational costs due to community protests or protection of public and worker health and safety**, competitive pressures associated with the adoption of new technologies, as well as reputational impacts (including those stemming from a registrant's customers or business counterparties and **changing customer or community perceptions of a registrant's contribution to or detraction from the transition to a lower-carbon economy**[64]**)** that might trigger changes to market behavior, consumer preferences or behavior, and registrant behavior."

10. We define transition risks to include legal liability, litigation, or reputational risks. Should we provide more examples about these types of risks? Should we require more specific disclosures about how a registrant assesses and manages material legal liability, litigation, or reputational risks that may arise from a registrant's business operations, climate mitigation efforts, or transition activities?

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[62] 350.org et al. (2021, June 14). *Letter to Chair Gensler Re: Response to Call for Public Input on Climate Change Disclosures from Commissioner Allison Herren Lee.* https://www.sec.gov/comments/climate-disclosure/cll12-9061308-246408.pdf

[63] IPCC. (2022). Summary for Policymakers. In Pörtner, H.O., Roberts, D.C., Poloczanska, E.S., Mintenbeck, K., Tignor, M., Alegría, A., Craig, M., Langsdorf, S., Löschke, S., Möller, V. & Okem, A. (eds.), Climate Change 2022: Impacts, adaptation, and vulnerability (p. 31, 34). Cambridge University Press. In Press.

[64] Note: we pull the phrase "changing customer or community perceptions of an organization's contribution to or detraction from the transition to a lower-carbon economy" directly from the definition of reputational risks included in: Task Force on Climate Related Financial Disclosures. (2017, June 15). *Final report: Recommendations of the Task Force on Climate-Related Disclosures.* https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf

See response to question 9 for our recommendation on an expanded definition of transition risk. Additional examples of transition risk would be useful to support registrants in identifying material transition risks – particularly those that would be amplified due to intersecting community consequences; **<u>we recommend that the Commission improve the final rule by providing additional examples drawing on themes provided in the case studies below.</u>**

(1) Transition risks related to stakeholder resistance are particularly significant when Indigenous peoples' rights are disrespected.

In many GHG-intensive and extractive industries with a long history of human or land rights abuses, the combination of climate and community risks has resulted in fierce and successful local community resistance – often inspiring opposition movements, increasing public and media attention beyond the local level, and creating operational, legal, political, and reputational risks[65] that sometimes influence decisions by governments and companies to cancel key permits and projects.[66] Community disputes, legal challenges, and opposition are often left out of company disclosures, despite the clear impact they can have on financial performance, business operations, and value chains. A recent study on ESG and credit risk found that "investors proximate to Indigenous land claims experience 60% to 160% increases in material credit events such as lawsuits, regulatory inquiries, and actions as well as labor-related actions."[67] Further, as several of this letter's signatories argued in a previous letter responding to the 2021 Climate Risk Disclosure RFI, "operational risks can stem from community protests and blockades, which may delay or even permanently obstruct a project, or necessary inputs may not be accessible. As research conducted by the Corporate Social Responsibility Initiative at Harvard Kennedy School and the Centre for Social Responsibility in Mining at the University of Queensland

[65] 350.org, et al. (2021, June 14). *Letter to Chair Gensler Re: Response to Call for Public Input on Climate Change Disclosures from Commissioner Allison Herren Lee.* https://www.sec.gov/comments/climate-disclosure/cll12-9061308-246408.pdf

[66] The Indigenous Environmental Network and Oil Change International's report highlights seven carbon-emitting projects in the U.S. and Canada that have been cancelled or denied key permits following Indigenous social movements opposing these projects to protect the environment and Indigenous sovereignty and self-determination. For example, following a more than decade-long struggle led by tribes and communities in the United States and Canada, President Biden transitioned into office in 2021 and took a major step in the beginning of his administration by revoking the presidential permit for the Keystone XL pipeline. Six months later, TC Energy announced the project was officially cancelled. The report also highlights the Biden Administration's Executive Order placing "a moratorium on all oil and gas development activity in the Arctic National Wildlife Refuge." where "Gwich'in (Athabascan) people of interior Alaska and the Inupiat (Eskimo) people of the North Coast have depended on the caribou and the land for food, clothing and their subsistence way of life, for thousands of years." See Goldtooth, D., & Saldamando, A. (2021). *Indigenous resistance against carbon.* Indigenous Environmental Network and Oil Change International. https://www. ienearth.org/wp-content/uploads/2021/09/Indigenous-Resistance-Against-Carbon-2021.pdf

[67] Henisz, W., & McGlinch, J. (2019, July 2). ESG, material credit events, and credit risk. *Applied Corporate Finance,* 31(2), 105-117. https://onlinelibrary.wiley.com/doi/10.1111/jacf.12352

demonstrated, 'most extractive companies do not currently identify, understand and aggregate the full range of costs of conflict with local communities.'"[68]

<u>The case studies below demonstrate potential for amplification of transition risks for companies in extractive industries where Indigenous or tribal rights are not respected.</u>

Energy Transfer LP and the Dakota Access Pipeline (DAPL)[69]

(Note: Energy Transfer LP[70] is the controlling owner of DAPL.)

> Developers of fossil fuel infrastructure will likely face financial risks in the transition to a clean energy economy – risks that will be amplified if Indigenous or tribal rights are not respected. Energy Transfer LP's Dakota Access Pipeline is a 1,172 mile crude oil pipeline that continues to face local, national, and global resistance.[71] Energy Transfer LP, the company's investors, and the pipeline's financers faced major losses in the construction of the Dakota Access Pipeline (DAPL) after failing to account for the pipeline's threats to the local environment, the siting of the pipeline on the Standing Rock Sioux Tribe's treaty territory, and the pipeline's alleged violations of the Indigenous and sovereign tribal rights of other tribes across the Great Plains. The Standing Rock Sioux Tribe opposed the pipeline for three years, creating a movement that resulted in long-term material losses stemming from reputational, operational, and legal risks to Energy Transfer LP and DAPL. The tribe's fight and legal challenge drew protests in Standing Rock as large as 15,000 people. Protestors from around the world gathered to physically

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[68] Davis, R., & Franks, D. (2014). *Costs of company-community conflict in the extractive sector*. CSR Initiative at the Harvard Kennedy School. https://www.csrm.uq.edu.au/media/docs/603/Costs_of_Conflict_Davis-Franks.pdf

[69] Content for this case study was originally provided to the SEC by several letter signatories in response to Commissioner Lee's RFI on climate risk disclosures in July 2021. See 350.org, et al. (2021, June 14). *Letter to Chair Gensler Re: Response to Call for Public Input on Climate Change Disclosures from Commissioner Allison Herren Lee.* https://www.sec.gov/comments/climate-disclosure/cll12-9061308-246408.pdf

70 Dakota Access Pipeline (DAPL) is a joint venture led by Energy Transfer LP, $36 billion market capitalization, $49 billion in fixed income across 70 corporate bonds, 9 loans, and 3 preferreds, 12,500 employees, with ownership stakes by MarEn Bakken Company (a joint venture between Enbridge and Marathon Petroleum Corporation), and Phillips. Energy Transfer was formed in 1996 and became a publicly traded partnership in 2004. DAPL originates near Stanley, North Dakota, and traverses North Dakota, South Dakota and Iowa before terminating at the Patoka Oil Terminal near the towns of Patoka and Vernon in Illinois.

Ownership is:

1. Energy Transfer LP: 36.40% (ET US Equity, FIGI BBG000BM2FL9, ISIN US29273V1008) (Energy Transfer LP (March 31, 2022). SEC Filing, form 10-Q. https://ir.energytransfer.com/node/41896/html)
2. Enbridge: 27.60% (ENB US Equity, FIGI BBG000K5M1S8, ISIN CA29250N1050) (Enbridge (December 31, 2021). *2021 10K.* https://www.marketwatch.com/investing/secfile/15553983)
3. Phillips 66: 25.00% (PSX US Equity, FIGI BBG00286S4N9, ISIN US7185461040) (Phillips 66 (December 31, 2021). *2021 10K.* https://www.marketwatch.com/investing/secfile/15585475)
4. Marathon Petroleum Corporation: 9.19% (MPC US Equity, FIGI BBG001DCCGR8, ISIN US56585A1025) (Marathon Petroleum Corporation (December 31, 2021). *2021 10K.* https://d18rn0p25nwr6d.cloudfront.net/CIK-0001510295/dae2337b-f7be-4089-8cef-7acb12708a9c.pdf)

[71] Fredericks, C. F., Meaney, M., Pelosi, N., & Finn, K. R. (2018). *Social cost and material loss: The Dakota Access Pipeline.* First Peoples Worldwide. https://www.colorado.edu/program/fpw/sites/default/files/attached-files/social_cost_and_material_loss_0.pdf

protest the pipeline's continued construction with millions more following closely on social media and in the press. In February 2018, the Standing Rock Sioux Tribe issued a report, *Impacts of an Oil Spill from the Dakota Access Pipeline on the Standing Rock Sioux Tribe*, that documented what environmental, economic, and social consequences an oil spill from DAPL would have on the fish, wildlife, and sensitive wetlands that the Tribe depends on, as well as on the Tribe's cultural and spiritual uses of the land.[72] The Tribe was also concerned that DAPL would contaminate their primary source of water for drinking, irrigation, and business uses.[73] There was significant press around the environmental impacts of DAPL, and the Indigenous-led opposition against DAPL drew many supporters from the environmental movement.[74] While the Standing Rock Sioux Tribe's opposition to DAPL focused on their position that the pipeline violated Indigenous rights (including the right to FPIC) and the tribe's sovereign rights, public attention on the climate impacts of DAPL occurred simultaneously and amplified public opposition against the project. According to one assessment by environmentalists, the pipeline's carbon footprint would be equal to that of 30 coal-fired power plants.[75,76]

A 2018 analysis of the impact of Indigenous and tribal resistance against DAPL by First Peoples Worldwide found that, though initially estimated to cost $3.8 billion, the pipeline cost more than $12 billion by the time it was operational in June 2017, with losses accumulated from the long delays in construction due to social unrest and legal filings. Furthermore, Energy Transfer LP's stock price significantly underperformed relative to market expectations, and it experienced a long-term decline in value that persisted after the project was completed. In fact, from August 2016 to September 2018 – while the S&P 500 increased by nearly 35 percent – ETP's stock declined by almost 20 percent.[77]

The reputational risks associated with the protests impacted a range of market participants: banks financing DAPL incurred $4.4 billion in losses from direct account

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[72] As referenced in McKenna, P. (2018, March 9). Standing Rock: Dakota Access Pipeline leak technology can't detect all spills. *Inside Climate News.* https://insideclimatenews.org/news/09032018/dakota-access-oil-pipeline-leak-detection-technology-standing-rock-water-safety-energy-transfer-partners; Friedman, Lisa (2020, March 25). Standing Rock Sioux Tribe Wins a Victory in Dakota Access Pipeline Case. *The New York Times.* https://www.nytimes.com/2020/03/25/climate/dakota-access-pipeline-sioux.html

[73] Fredericks, C. F., Meaney, M., Pelosi, N., & Finn, K. R. (2018). *Social cost and material loss: The Dakota Access Pipeline.* First Peoples Worldwide. https://www.colorado.edu/program/fpw/sites/default/files/attached-files/social_cost_and_material_loss_0.pdf

[74] Dolšak, N., Prakash, A., & Allen, M. (2016, September 20). The big fight over the Dakota Access Pipeline, explained. *Washington Post.* https://www.washingtonpost.com/news/monkey-cage/wp/2016/09/20/this-is-why-environmentalists-are-targeting-energy-pipelines-like-the-north-dakota-project/

[75] McKenna, P. (2016, October 11). Dakota Access opponents thinking bigger, aim to halt entire pipeline. *Inside Climate News.* https://insideclimatenews.org/news/11102016/dakota-access-opponents-think-bigger-aim-halt-pipeline-standing-rock-sioux-keystone/

[76] Stockman, L. (2016, September 12). The Dakota Access Pipeline will lock-in the emissions of 30 coal plants. *Oil Change International Blog.* https://priceofoil.org/2016/09/12/the-dakota-access-pipeline-will-lock-in-the-emissions-of-30-coal-plants/

[77] Fredericks, C. F., Meaney, M., Pelosi, N., & Finn, K. R. (2018). *Social cost and material loss: The Dakota Access Pipeline.* First Peoples Worldwide. https://www.colorado.edu/program/fpw/sites/default/files/attached-files/social_cost_and_material_loss_0.pdf

closures of individuals and local governments as a result of a boycott campaign (this estimate does not include costs related to reputational damage).[78] As further evidence, in July 2020, Moody's downgraded Midwest Connector Capital Company's[79] credit outlook from stable to negative.[80]

GeoPark[81]

Registrants engaging in activities with significant GHG emissions, such as fossil fuel production, will likely face increasing risks in the transition to a clean energy economy. These risks are likely to be amplified due to concerns about disrespect for Indigenous peoples' rights. For example, after over 25 years of Indigenous-led opposition to oil exploration in the oil field known as Block 64 of the Peruvian Amazon, GeoPark was the third oil company to abandon its stake in the area. The challenge to the exploration was led by Achuar, Wampis, and Kichwa Indigenous peoples due to the risk of "grave contamination to the environment, water, and resources on which Indigenous communities depend" and lack of consultation with local tribes.[82]

Despite the history of opposition in the oil field, GeoPark's SEC filings' discussion of the decision to withdraw made no mention of community opposition. GeoPark's filings listed an impairment loss of $34 million; 2017 and 2018 filings note construction costs in the block of at least $36.8 million.[83] Block 64 had a net present value of $222 million and $336 million proven (1P) and probable (2P) reserves, together at $558 million equal to 22% of GeoPark's total net present value of $2.5 billion for the company's overall proven (1P) and probable (2P) reserves.[84] In sum, GeoPark lost at least $70 million and 22% of its proven and probable reserves when it gave up its oil exploration and drilling project in the Peruvian Amazon after fierce community opposition. A review of GeoPark's 20-F

[78] Fredericks, C. F., Meaney, M., Pelosi, N., & Finn, K. R. (2018). *Social cost and material loss: The Dakota Access Pipeline.* First Peoples Worldwide. https://www.colorado.edu/program/fpw/sites/default/files/attached-files/social_cost_and_material_loss_0.pdf

[79] Midwest Connector is a special purpose entity formed solely for the purpose of issuing notes that are jointly and severally guaranteed by Dakota Access, LLC (DAPL) and Energy Transfer Crude Oil Company, LLC (ETCOC) (wholly owned by Energy Transfer LP) the respective owners of the DAPL and ETCOC pipeline assets which together comprise the Dakota Access crude oil pipeline system (Dakota Access).

[80] Moody's Investor Services. (2020, July 7). Rating Action: Moody's changes Midwest Connector Capital's outlook to negative. *Moody's.* https://www.moodys.com/research/Moodys-changes-Midwest-Connector-Capitals-outlook-to-negative--PR_428043

[81] Content for this case study was originally provided to the SEC by several letter signatories in response to Commissioner Lee's RFI on climate risk disclosures in July 2021: see 350.org et al. (2021, June 14). *Letter to Chair Gensler Re: Response to Call for Public Input on Climate Change Disclosures from Commissioner Allison Herren Lee.* https://www.sec.gov/comments/climate-disclosure/cll12-9061308-246408.pdf

[82] Peruvian Congress Press Conference. (2004, February 16). As cited in EarthRights International, Racimos de Ungurahui, & Amazon Watch. (2007). *A legacy of harm: Occidental petroleum in indigenous territory in the Peruvian Amazon*, https://earthrights.org/wpcontent/uploads/publications/A-Legacy-of-Harm.pdf.

[83] Amazon Watch review of GeoPark's 6-K and 20-F filings from 2017-2020. As cited in 350.org, et al. (2021, June 14). *Letter to Chair Gensler Re: Response to Call for Public Input on Climate Change Disclosures from Commissioner Allison Herren Lee.* https://www.sec.gov/comments/climate-disclosure/cll12-9061308-246408.pdf

[84] GeoPark. (2021, February 18). *Geopark announces 2020 certified 2p reserves of 175 million BOE with net present value (after tax) of $2.5 billion* [Press Release]. https://geopark-ir.prod-use1.investis.com/~/media/Files/G/Geopark-IR/documents/geopark-2020-reserves-release.pdf

filings with the SEC from 2014-2019 – the years that GeoPark held a license to operate in Block 64 – shows that the company provided very limited information about community opposition to drilling in the block. While GeoPark disclosed the presence of Indigenous communities in the block, it made only vague reference to Indigenous community opposition to "similar" oil operations in the Peruvian Amazon.[85]

At present, GeoPark is facing further community resistance in the Putumayo Department in the Colombian Amazon. In 2019 GeoPark acquired Amerisur, a petroleum company operating in Colombia and Paraguay. Amerisur had been operating oil blocks since 2008 near the Indigenous Siona community of Buenavista,[86] as well as the *campesino* (small-scale family farmer) community of Perla Amazónica.

In a press release announcing the acquisition, GeoPark claimed that Amerisur had a "successful record of safety and environmental operations," and "actively contributed to the communities where it operates."[87] However, this is in direct contradiction to the community response in Putumayo. Residents of both Buenavista and Perla Amazónica have opposed oil exploitation due to claims including water contamination, underhanded dealings, and exacerbation of militia violence by oil companies in the area. Community resistance to Amerisur (and now GeoPark) has received international media coverage**.**[88] Following this community opposition, GeoPark has been forced to suspend or terminate contracts in several of its oil blocks in Putumayo.[89]

These examples illustrate the considerable financial and reputational risks borne by companies like GeoPark when operating without sufficient consent of Indigenous peoples or local communities or in areas with political conflict. In both cases, investors may face risks related to the lack of disclosure of conflicts with local communities and for failure to obtain FPIC before engaging in corporate activities that infringed on Indigenous peoples' rights.

**Note: GeoPark has denied allegations of human rights abuses or connections with illegal groups in Putumayo.*[90]

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[85] Amazon Watch review of GeoPark's 6-K and 20-F filings from 2017-2020. As cited in 350.org, et al. (2021, June 14). *Letter to Chair Gensler Re: Response to Call for Public Input on Climate Change Disclosures from Commissioner Allison Herren Lee.* https://www.sec.gov/comments/climate-disclosure/cll12-9061308-246408.pdf
[86] Hill, D. (2019, April 2). 'Defending our existence': Colombian tribe stands in the way of oil exploration. *The Guardian*. https://www.theguardian.com/world/andes-to-the-amazon/2019/apr/02/colombia-siona-tribe-oil-exploration-territory-putumayo
[87] GeoPark. (2019, November 15). *Geopark announces all-cash acquisition of Amerisur resources (London-Listed Latin American E&P company)* [Press Release]. https://www.geo-park.com/files/releases/GeoPark_Announces_Amerisur_Acquisition__Final_002_EN_1.pdf
[88] Hill, D. (2019, April 2). 'Defending our existence': Colombian tribe stands in the way of oil exploration. *The Guardian*. https://www.theguardian.com/world/andes-to-the-amazon/2019/apr/02/colombia-siona-tribe-oil-exploration-territory-putumayo
[89] Geopark Limited. (2022, March 21). Form 20-F filed at SEC. https://otp.tools.investis.com/clients/us/geo_park/SEC/sec-show.aspx?Type=html&FilingId=15701401&CIK=0001464591&Index=10000
[90] GeoPark. (2022, May 24). *Public Statement.* [Press Release]. https://www.geo-park.com/en/news/comunicado-a-la-opinion-publica/

(2) Climate-related reputational risks increase where GHG emissions intersect with environmental justice issues and pose threats to public health and safety.

Significant public resistance occurs in response to corporate activities that create substantial GHG emissions and concomitant air pollution, raise environmental justice issues, and pose threats to public health and safety. This public resistance increases the legal, political, and reputational risks faced by registrants, as evidenced by the case study below. We recommend the addition of examples in the final rule that draw on the themes demonstrated in the following case:

Formosa Petrochemical Corporation and the "Sunshine Project"

Formosa Petrochemical Corporation (FPCC)[91, 92, 93] is seeking to build its "Sunshine Project," a 14-facility complex in St. James Parish, Louisiana, which is estimated to cost at least $12 billion. The project would be located near an elementary school and situated along the 85-mile stretch of the Mississippi River between New Orleans and Baton Rouge colloquially referred to as "Cancer Alley" – where a cluster of industrial plants and refineries cited in and near predominantly Black communities expose residents to high concentrations of cancer-causing chemicals. The site would use ethane, a byproduct of fracking, to produce various plastics.[94, 95]

The planned project is permitted to emit over 13.6 million tons of CO_2e per year, and, if completed, the project has the potential to be among the largest sources of GHG emissions in the U.S.[96] It would also double toxic air pollution in St. James Parish; the project's permitted GHG emissions are linked with the release of other possible toxic pollutants and chemicals that could most harm plant workers and the surrounding communities, especially as physical risks to the plant intensify.[97] Because of the plant's potential harm to the climate, environment, and public health, as well as threats to

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[91] Formosa Petrochemical Corporation owns 57% of FG Inc, and FG Inc. owns 100% of FG LA LLC ("Sunshine Project"), according to their Formosa Petrochemical Corporation's Individual Financial Statements for the Years Ended December 31, 2021, and December 31, 2020; audit available at Ernst and Young Global Limited (2021). *Formosa Petrochemical Corporation individual financial statements: Independent auditor's report translated from Chinese.*
http://www.fpcc.com.tw/common/frontend/download?path=/uploads/images/ir/11004%E8%8B%B1%E6%96%87%E5%80%8B%E9%AB%94.pdf&name=

[92] Formosa Petrochemical Corporation's ticker is 6505 TT Equity, FIGI is BBG000D0FJX0, and ISIN is TW0006505001. Its market capitalization is $31 billion with 5,200 employees and $1 billion in fixed income securities outstanding across eight corporate bonds.

[93] According to Moody's Bureau van Dijk Orbis, FPCC is the Global Ultimate Owner of the Sunshine Project. Moody's Bureau van Dijk Orbis. (2022, April 26). Searching for "who is Global Ultimate Owner of the FG LA LLC doing business as "Sunshine Project" BvD ID: US333762011L Orbis ID: 498574135. https://orbis.bvdinfo.com/

[94] FG LA LLC. (2022). *Frequent questions.* http://www.sunshineprojectla.com/faq.php

[95] RISE St. James, Stop Formosa Plastics Coalition, & Friends of the Earth US. (2021, July 21). *Formosa Plastics' "Sunshine Project."* BankTrack. https://www.banktrack.org/project/formosa_plastics_sunshine_project/pdf

[96] Storrow, B. (2020, January 24). Plastics plants are poised to be the next big carbon superpolluters. *Scientific American.* https://www.scientificamerican.com/article/plastics-plants-are-poised-to-be-the-next-big-carbon-superpolluters/

[97] Laughland, O. (2021, August 18). Multibillion-dollar Louisiana plastics plant put on pause in a win for activists. *The Guardian.* https://www.theguardian.com/us-news/2021/aug/18/louisiana-plastics-plant-toxic-emissions-cancer-alley

environmental justice communities, FPCC has faced intense public opposition from a broad-based local coalition, led by a faith-based, Black-led community organization called Rise St. James. This opposition garnered widespread public support[98] and international media coverage[99] that has damaged the project's reputation. This growing resistance movement, combined with political support,[100] has led to increased regulatory scrutiny, contributing to the U.S. Army Corps of Engineers' decision to commission a full environmental impact statement, in effect placing the project on hold for an estimated two years or longer.[101, 102] According to a memo from the Assistant Secretary of the Army for Civil Works, the Army Corps of Engineers would "thoroughly review areas of concern, particularly those with environmental justice implications."[103] This decision to commission a full environmental impact statement came after the U.S. Army Corps of Engineers suspended the project's wetlands permit in November 2020.[104] Further, the U.S. Environmental Protection Agency has opened civil rights investigations to assess

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[98] Ramirez, R. (2021, May 17). 'This is environmental racism': activists call on Biden to stop new plastics plants in "Cancer Alley." *The Guardian.* https://www.theguardian.com/us-news/2021/may/17/st-james-parish-formosa-complex-biden-cancer-alley

[99] See, for example, Laughland, O. (2021, August 18). Multibillion-dollar Louisiana plastics plant put on pause in a win for activists. *The Guardian.* https://www.theguardian.com/us-news/2021/aug/18/louisiana-plastics-plant-toxic-emissions-cancer-alley; Consider It. (2019, January 3). *Inside one community's battle against environmental racism* [Video post]. Facebook. https://www.facebook.com/watch/?v=1129478933881054; Baker, K. C. (2021, August 4). La. grandma takes on chemical companies in Cancer Alley 'like a roaring lion' -- and succeeds. *People.* https://people.com/human-interest/louisiana-grandma-takes-on-chemical-companies-in-cancer-alley/; Mufson, S. (2021, April 19). Huge plastics plant faces calls for environmental justice, stiff economic headwinds. *The Washington Post.* https://www.washingtonpost.com/climate-environment/2021/04/19/huge-plastics-plant-faces-calls-environmental-justice-stiff-economic-headwinds/; and Juhasz, S. (2019, October 30). Louisiana's 'Cancer Alley' is getting even more toxic -- but residents are fighting back. *Rolling Stone.* https://www.rollingstone.com/politics/politics-features/louisiana-cancer-alley-getting-more-toxic-905534/ ; Baker, K. C. (2021, August 4). La. grandma takes on chemical companies in Cancer Alley 'like a roaring lion' -- and succeeds. *People.* https://people.com/human-interest/louisiana-grandma-takes-on-chemical-companies-in-cancer-alley/; Mufson, S. (2021, April 19). Huge plastics plant faces calls for environmental justice, stiff economic headwinds. *The Washington Post.* https://www.washingtonpost.com/climate-environment/2021/04/19/huge-plastics-plant-faces-calls-environmental-justice-stiff-economic-headwinds/; and Juhasz, S. (2019, October 30). Louisiana's 'Cancer Alley' is getting even more toxic -- but residents are fighting back. *Rolling Stone.* https://www.rollingstone.com/politics/politics-features/louisiana-cancer-alley-getting-more-toxic-905534/

[100] Frazin, R. (2021, March 17). Lawmakers ask Biden to revoke permit for major plastics plant over pollution concerns. *The Hill.* https://thehill.com/policy/energy-environment/543715-lawmakers-ask-biden-to-revoke-permit-for-major-plastics-plant-over/

[101] Laughland, O. (2021, August 18). Multibillion-dollar Louisiana plastics plant put on pause in a win for activists. *The Guardian.* https://www.theguardian.com/us-news/2021/aug/18/louisiana-plastics-plant-toxic-emissions-cancer-alley

[102] Mitchell, D. J. (2021, November 1). Massive Louisiana plastics plant faces 2+ year delay for tougher environmental review. *The Advocate (Baton Rouge).* https://www.theadvocate.com/baton_rouge/news/article_c58e7f22-3997-11ec-909f-9bdd7461a90c.html

[103] Volcovici, V. (2021, August 18). U.S. Army orders environmental review of Louisiana plastics project. *Reuters.* https://www.reuters.com/legal/litigation/us-army-orders-environmental-review-louisiana-plastics-project-2021-08-18/

[104] Center for Biological Diversity. (2020, November 4). *Army corps suspends permit for Formosa Plastics' controversial Louisiana plant* [Press Release]. https://biologicaldiversity.org/w/news/press-releases/army-corps-suspends-permit-for-formosa-plastics-controversial-louisiana-plant-2020-11-04/

whether the Louisiana Department of Environmental Quality engaged in discriminatory practices when granting permits to projects in St. James Parish and St. John Parish.[105,106]

There is evidence that the combined impact of climate risks and community resistance could create material risks for FPCC, such as increased project costs, liability for pollution, and loss of financers for the “Sunshine Project.”[107] For example, project construction has been delayed, causing increases in projected costs for the complex.[108] FPCC also faces divestment campaigns. Organizations from around the world are pressuring potential financers of the “Sunshine Project” to stop funding construction of the proposed project and related projects and cease or refrain from providing other types of financial support to FPCC and other related affiliates.[109] Bank of America is one of the major banks facing public scrutiny for its likely role in helping to raise money for the project.[110] Advocates have been pressuring the Parish Council,[111] the Louisiana Department of Environmental Quality,[112] the U.S. Environmental Protection Agency,[113]

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105 Coleman, L. W. (2022, April 28). EPA Investigates Civil Rights Violations Allegations Against LDEQ. *EHS Daily Advisor.* https://ehsdailyadvisor.blr.com/2022/04/epa-investigates-civil-rights-violations-allegations-against-ldeq/

106 Laughland, O. (2022, April 14). EPA opens civil rights investigations over pollution in Cancer Alley. *The Guardian.* https://www.theguardian.com/us-news/2022/apr/14/cancer-alley-louisiana-civil-rights-investigations-epa-pollution

107 Sanzillo, T., & Mattei, S. (2021). *Formosa’s Louisiana Project: Wrong Products, Wrong Time, Wrong Place, Wrong Finances.* Institute for Energy Economics and Financial Analysis. https://ieefa.org/wp-content/uploads/2021/03/Formosa-Louisiana-Wrong-Products-Wrong-Time-Wrong-Place-Wrong-Finances_March-2021.pdf

108 J.P. Morgan (2021, February 2). Taiwan Energy: 2021 the start of a multi-year earnings upcycle; Prefer FPC > FCFC > NPC > FPCC. Asia Pacific Equity Research.

109 Friends of the Earth. (April 27, 2021). *175 organizations call on banks not to finance Formosa Plastics’ Louisiana plant* [Press Release]. https://foe.org/news/175-organizations-call-on-banks-not-to-finance-formosa-plastics-louisiana-plant/

110 Friends of the Earth. (2021). Stop Formosa Plastics’ petrochemicals plant in Cancer Alley! *Action Network Petition*. https://actionnetwork.org/petitions/stop-formosa-plastics-petrochemicals-plant-in-cancer-alley?source=direct_link&

111 Earthjustice. (2019, December 23). *Residents, civil rights groups, national legal organizations call on St. James parish council to rescind Formosa Plastics land use decision* [Press Release]. https://earthjustice.org/news/press/2019/residents-civil-rights-groups-national-legal-organizations-call-on-st-james-parish-council-to-rescind-formosa

112 Center for Biological Diversity. (2020, February 14). *Appeal challenges Louisiana’s air permits for Formosa Plastics’ massive petrochemical complex in Cancer Alley: State permit failed to address increased pollution, disproportionate racial impacts, contribution to climate change* [Press Release]. https://biologicaldiversity.org/w/news/press-releases/appeal-challenges-formosa-plastics-air-permits-in-louisiana-2020-02-14/

113 Tumeh, D., Cheuse, E., & Spence, D. (2022, January 20). *Earth Justice to Anhthu Hoang and Daria Neal* [Letter]. Retrieved from https://earthjustice.org/sites/default/files/files/22.01.20_ccsj_sc_title_vi_complaint_w_attachments.pdf

the U.S. Army Corps of Engineers,[114] and President Biden[115] to stop construction of the "Sunshine Project," posing additional political risks to the project.

Other market participants are taking note. Already, in 2020, the Norwegian Government Pension Fund announced the exclusion of Formosa Chemicals and Fibre, one of the minority owners of the "Sunshine Project," [116] from its portfolio, citing "unacceptable risk for violation of human rights."[117] The "Sunshine Project" is seen as a risk to its owners: for example, in its credit outlook for FPCC, S&P Global has stated that pursuing the project would weaken FPCC's credit profile.[118]

Despite these many risks, the FPCC and Subsidiaries Consolidated Financial Statements for the period from January 1, 2021 to September 30, 2021, and for the period from January 1, 2020, to September 30, 2020, contain no appropriate disclosures on climate-related risk management.[119]

(3) Corporate activities that degrade high conservation land and natural assets will face more significant reputational risks if they also threaten the livelihoods of local communities, abuse Indigenous peoples' rights, human rights, and/or reduce community resilience.

Investors and governments are increasingly adopting policies and commitments related to land use change and deforestation due to the disproportionate value of those ecosystems in stabilizing the climate and preventing catastrophic climate change.[120] Protecting these ecosystems is also critical to protecting the value chains that depend on tropical forest commodities. As discussed in question 9 above, supporting local communities in forested areas is an important climate risk mitigation strategy: the resilience and protection of forest ecosystems can be advanced by

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[114] Center for Biological Diversity. (2020, November 4). *Army corps suspends permit for Formosa Plastics' controversial Louisiana plant* [Press Release]. https://biologicaldiversity.org/w/news/press-releases/army-corps-orders-full-environmental-review-of-formosa-plastics-controversial-louisiana-plant-2021-08-18/

[115] Ramirez, R. (2021, May 17). 'This is environmental racism': activists call on Biden to stop new plastics plants in 'Cancer Alley'. *The Guardian*. https://www.theguardian.com/us-news/2021/may/17/st-james-parish-formosa-complex-biden-cancer-alley

[116] Formosa Chemicals and Fibre (one of the four companies – including Formosa Petrochemical Corporation – that form the Formosa Group conglomerate) ticket is 1326 TT Equity, FIGI is BBG000BCW4G9, and ISIN is TW0001326007. Formosa Chemicals and Fibre is a $16 billion market capitalization company with 4,600 employees and $2.4 billion in fixed income outstanding across 14 corporate bonds and four loans.

[117] Fouche, G., & Solsvik, T. (2020, August 31). Norway fund excludes firms over human rights violation risk. *Reuters.* https://www.reuters.com/article/norway-swf-ethics/update-1-norway-fund-excludes-firms-over-human-rights-violation-risk-idUSL8N2FX1X3?edition-redirect=in

[118] Cheng, R., & Hsu, R. (2021, October 7). Ratings On Formosa Plastics Corp. and three associated companies affirmed at 'BBB+' on low debt leverage; outlook stable. *S&P Global Ratings.* http://ieefa.org/wp-content/uploads/2022/02/SP%E4%BF%A1%E8%A9%95%E6%96%B0%E8%81%9E%E7%A8%BF_20211007.pdf

[119] Formosa Petrochemical Corporation's Individual Financial Statements for the Years Ended December 31, 2021, and December 31, 2020, audited by Ernst & Young; audit available at Ernst and Young Global Limited (2021). *Formosa Petrochemical Corporation individual financial statements: Independent auditor's report translated from Chinese.* http://www.fpcc.com.tw/common/frontend/download?path=/uploads/images/ir/11004%E8%8B%B1%E6%96%87%E5%80%8B%E9%AB%94.pdf&name=

[120] McKenzie, H. (2022, February 23). ESG explainer: Halting deforestation. *ESG Investor*. https://www.esginvestor.net/esg-explainer-halting-deforestation/

respecting the land and human rights of Indigenous and tribal peoples. Accordingly, corporate activities that cause land use change, increase deforestation, and threaten the land or human rights of Indigenous and tribal peoples and local communities are likely to face strong reputational risks and market pressures.

We recommend the addition of examples in the final rule that draw on the themes demonstrated in the following case:

JBS

Brazil-based JBS[121] is the world's largest processor of animal protein, with beef its top product. JBS works with around 30,000 ranchers in Brazil.[122] It is well-documented that cattle production is the largest driver of deforestation in the Amazon and that industrial meat production is responsible for 80 percent of deforestation across Amazon countries.[123] Since the mid-2000s, JBS has made many zero-deforestation commitments, though several reports have also linked the company to unregulated and at times unlicensed Amazonian deforestation since 2008. A recent report estimated that JBS's total deforestation footprint since 2020 represents roughly 1.7 million hectares, with a projected 64 million hectares of forest at risk from its indirect supply chain.[124]

In 2021 JBS' Scope 1, 2, and 3 GHG emissions were estimated to be 421.6 metric tons of CO_2e.[125] Indeed, globally JBS operations have been estimated to produce around half the annual GHG emissions of fossil fuel companies such as ExxonMobil, Shell, or BP, and emissions have risen over 51 percent in the last five years.[126] This is further indication that JBS's 2040 Net Zero commitments are misleading; their pledge has no plan to deliver rapid emissions reductions nor to put an end to deforestation in the Amazon, Cerrado, or Pantanal biomes in Brazil.

Industrial agriculture, land clearing, and fires continue to violate Indigenous land rights throughout areas where JBS and its suppliers operate. Approximately 90% of the Brazilian Pantanal is under "self-declared" land claims, where ownership is not verified

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[121] JBS S.A. is $16 billion market capitalization company with $14.6 billion in fixed income outstanding and 250,000 employees. Its ticker is JBSS3 BZ Equity, FIGI is BBG000N6Q0M7, ISIN is BRJBSSACNOR8, and has many equity tickers, 12 bonds, and 9 loans within its corporate capital stack.

[122] JBS Sustainability, Investor Relations, and Corporate Communications Areas. (2020). *Sustainability Report: Environmental, Social and Governance.* JBS, 71. https://api.mziq.com/mzfilemanager/v2/d/043a77e1-0127-4502-bc5b-21427b991b22/58af758c-29c6-a394-0447-b6eb48fc518c?origin=1

[123] Yale School of the Environment. (2021). Cattle Ranching in the Amazon Region. *Global Forest Atlas.* https://web.archive.org/web/20210224200921/https:/globalforestatlas.yale.edu/amazon/land-use/cattle-ranching

[124] Chain Reaction Research. (2020, August 31). JBS: Outsized deforestation in supply chain, COVID-19 pose fundamental business risks. Chain Reaction Research. https://chainreactionresearch.com/report/jbs-outsized-deforestation-in-supply-chain-covid-19-pose-fundamental-business-risks/

[125] Herrmann, M. (2022, April 21). Brazilian meat giant JBS a bigger emitter than Italy, study estimates. *DeSmog.* https://www.desmog.com/2022/04/21/brazilian-meat-giant-jbs-a-bigger-emitter-than-italy-study-estimates.

[126] DeSmog (2022, April 21). World's largest meat company, JBS, increases emissions by 51% in five years despite 2040 net zero climate target, continues to greenwash its huge climate footprint. *Institute for Agricultural and Trade Policy.* https://www.iatp.org/media-brief-jbs-increases-emissions-51-percent

by the state. As noted by a 2021 Greenpeace report, "[a]s a consequence, these land claims often overlap with Indigenous land and public conservation areas."[127] In the Pantanal, an area where JBS and its suppliers operate, 28% of Indigenous peoples' lands and 58% of public conservation areas overlap with areas claimed by agricultural operations.[128]

Against this background, the ongoing trend of deforestation and ecosystem destruction is intrinsically linked to land dispossession, which runs counter to the United Nations Declaration on the Rights of Indigenous Peoples, ratified by Brazil in 2007,[129] that protects the rights of Indigenous peoples to, among other things, FPIC for development of these lands and the ability to preserve their means of subsistence and cultures. Amnesty International has campaigned against JBS for the company's deforestation and human rights violations, carrying out protests in Brazil[130] and noting that "[i]llegal commercial cattle ranching drives land seizures, violence and threats against Indigenous peoples and traditional residents of Reserves."[131] A 2020 Greenpeace International report,[132] as well as reports by investigative journalists and other NGOS,[133] alleged that over a decade after JBS pledged to end deforestation, it remains linked to deforestation, fires, use of slave labor, land grabbing, and encroachment on Indigenous lands.

[127] Greenpeace International. (2021). *Making mincemeat of the Pantanal*. Greenpeace. https://www.greenpeace.org/static/planet4-international-stateless/2021/03/77f3941a-0988_gp_pan_mincemeat_v9.95_mixedres.pdf
[128] Greenpeace International. (2021). *Making mincemeat of the Pantanal*. Greenpeace. https://www.greenpeace.org/static/planet4-international-stateless/2021/03/77f3941a-0988_gp_pan_mincemeat_v9.95_mixedres.pdf
[129] UN General Assembly. (2007). *General Assembly Adopts Declaration on Rights of Indigenous Peoples; 'Major Step Forward' Towards Human Rights for All, Says President* [Press Release]. GA/10612. https://www.un.org/press/en/2007/ga10612.doc.htm
[130] Amnesty International. (2021). Brazilian activists protest the largest beef producer in the world [Video]. https://www.youtube.com/watch?v=dFYyFMm46Ds
[131] Amnesty International. (2020, October 7). Brazil: Cattle illegally grazed in the Amazon found in supply chain of leading meat packer JBS. *Amnesty International.* https://www.amnesty.org/en/latest/news/2020/07/brazil-cattle-illegally-grazed-in-the-amazon-found-in-supply-chain-of-leading-meat-packer-jbs/
[132] Greenpeace International. (2020, August 5). How JBS is still slaughtering the Amazon. *Greenpeace International.* https://www.greenpeace.org/international/publication/44522/how-jbs-is-still-slaughtering-amazon/
[133] See, for example, Campos, A., Wasley, A., Heal, A., Phillips, D., & Locatelli, P. (2020, July 27). Revealed: new evidence links Brazil meat giant JBS to Amazon deforestation. *The Guardian.* https://www.theguardian.com/environment/2020/jul/27/revealed-new-evidence-links-brazil-meat-giant-jbs-to-amazon-deforestation; Global Witness. (2020, December 2). Brazilian beef: inside the supply chain. *Global Witness.* https://www.globalwitness.org/en/blog/brazilian-beef-supply-chain/; and Amnesty International (2020, July 15). Brazil: From forest to farmland – cattle illegally grazed in Brazil's Amazon found in JBS's supply chain. Amnesty International. https://www.amnesty.org/en/documents/AMR19/2657/2020/en/

> Amid ongoing and undisclosed deforestation risks, corporate fraud, and other risks, investors and JBS have paid more than $3.2 billion in financial penalties.[134,135,136] In 2020 the Government Pension Fund of Norway[137] and Nordea Asset Management[138] both divested from JBS, and Moody's downgraded JBS credit rating from Ba3 to Ba2,[139] increasing its funding and borrowing costs. JBS' $500 million initial public offering of its JBS Foods International division was canceled in 2017[140] and was not offered as expected in 2021,[141] with the firm losing out on billions in funding.

To identify material climate-related transition risks and provide investors with complete and reliable disclosures of those risks, registrants must consider the intersectional impact of adverse community consequences of corporate activities related to identified climate risks. The addition of examples in the final rule that draw on the themes demonstrated in the cases above would support registrants in identifying those risks.

Further, in response to the second half of the question 10, "Should we require more specific disclosures about how a registrant assesses and manages material legal liability, litigation, or reputational risks that may arise from a registrant's business operations, climate mitigation efforts, or transition activities?", we recommend that registrants provide the following additional disclosures:

- Any and all public or community opposition (campaigns, protests, or resistance movements) related to the registrant's contribution to or detraction from the transition to a lower-carbon economy and connected community consequences[142] that may materially

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134 Brito, R., & Bautzer, T. (2017, May 21). Brazil's J&F agrees to pay record $3.2 billion fine in leniency deal. *Reuters*. https://www.reuters.com/article/us-brazil-corruption-jbs-idUSKBN18R1HE
135 Climate Advisors and Ceres. (2017). *Case Studies Series: Business Risks from Deforestation.* Ceres. https://www.ceres.org/sites/default/files/Engage%20the%20Chain/ETC%20Climate%20Advisors%20Case%20Studies%20(1).pdf
136 Camargos, D., Campos, A., Phillips, D., Wasley, A., & Heal, A. (2019, October 16). Even after a 25-million-real fine, JBS still sources livestock from Amazon-deforesting companies. *Reporter Brasil.* https://reporterbrasil.org.br/2019/10/even-after-a-25-million-real-fine-jbs-still-sources-livestock-from-amazon-deforesting-companies/
137 Earthsite. (2018, July 24). World's largest pension fund dumps shares in beef firm in wake of corruption scandal. *Earthsite.* https://www.earthsight.org.uk/news/idm/worlds-largest-pension-fund-dumps-shares-beef-firm-wake-corruption-scandal
138 Mano, A. (2020, August 1). Nordea drops JBS shares over environment, COVID-19 response. *Reuters*. https://www.reuters.com/article/us-brazil-jbs-nordea-idUKKBN24X3VD
139 Moody's Investors Service. (2017, June 9). Rating action: Moody's downgrades JBS' ratings; maintains review for downgrade. *Moody's Investors Service.* https://www.moodys.com/research/Moodys-downgrades-JBS-ratings-maintains-review-for-downgrade--PR_367897
140 Parra-Bernal, G., & Spring, J. (2017, October 16). Brazil's JBS withdraws plan for U.S. processed food unit IPO. *Reuters*. https://www.reuters.com/article/us-jbs-usa-ipo-idUSKBN1CL1KN
141 Sorvino, C. (2021, March 25). With a Banner 2020 Behind it, Meat Giant JBS Sets Sights on U.S. IPO. *Forbes*. https://www.forbes.com/sites/chloesorvino/2021/03/25/with-a-banner-2020-behind-it-meat-giant-jbs-sets-sights-on-us-ipo/?sh=6d21af9a69d8
142 See definition of community consequences, p. 3

impact the registrant's operations; registrant's responses and actions to address such opposition; and statements from complainants on how they assess the response.

- Any and all land rights grievances or complaints filed by Indigenous or tribal peoples in the registrant's areas of operations where climate-related financial risks or climate-related opportunities have been identified or significant Scope 1, 2, or 3 GHG emissions are expected; the registrant's responses and actions to address such grievances or complaints; and statements from complainants on how they assess the response.
- The names of any and all Indigenous peoples or tribal entities that would be impacted by the adverse community consequences of corporate activities related to identified climate-related financial risks and opportunities.
- A description of any open processes in which the registrant is seeking to consult with or obtain the consent of Indigenous peoples or tribal entities that would be impacted by a planned or in-process activity.
- A list of any and all consultation processes carried out in the past reporting year, including information on what entity carried out the consultation, and, if consent was obtained, how the impacted Indigenous peoples expressed that consent.
- A list of any and all legal processes in U.S. and/or foreign jurisdictions related to land rights disputes, consultation or consent processes, or other Indigenous or tribal rights matters.
- A list of any and all projects undertaken that require the relocation of local communities, including any and all compensation, monetary or otherwise, provided in exchange for relocation.
- The proximity of identified physical risks to vulnerable communities[143] and sensitive community locations (schools, hospitals, daycare centers, playgrounds, residential areas, etc.).
- The number and locations of all sources of hazardous waste,[144] chemicals,[145] and/or criteria air pollutants[146] owned or operated by registrant that may be impacted by identified physical risks.

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[143] "Vulnerable communities" has no set definition, but Bhatt and Bhatija (2018) list several characteristics that can lead to vulnerability, including lack of access to services; limited economic mobility and or high unemployment; lack of insurance; challenges in accessing services that stem from social, cultural, and/or language barriers; lower literacy and education levels; exposure to environmental hazards ranging from safety to air pollution to lack of access to the outdoors or to exercise. See Bhatt, J., & Bhatija, P. (2018). Ensuring access to quality healthcare in vulnerable communities. *Academic Medicine, 93*(9), 1271-1275. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6112847/

[144] As defined by EPA. (2021). *Learn the basics of hazardous waste.* https://www.epa.gov/hw/learn-basics-hazardous-waste#hwid; in addition, registrants should consider designated Superfund sites under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as well as coal ash ponds managed under the 2015 Coal Combustion Residuals Rule.

[145] For example, those managed under the EPA's Risk Management Plan (RMP) Rule (Section 112(r) of the 1990 Clean Air Act amendments). See EPA. (2021, December 20). *Risk Management Plan (RMP) rule.* https://www.epa.gov/rmp

[146] EPA. (2021, August 16). *Criteria air pollutants.* https://www.epa.gov/criteria-air-pollutants.

- The locations of Scope 1, 2, and 3 GHG emissions over 25,000 metric tons CO_2e annually wherever it is feasible (i.e., known or reasonably available according to Securities Act Rule 409 and Exchange Act Rule 12b-21).[147]

11. Some chronic risks might give rise to acute risks, e.g., drought (a chronic risk) that increases acute risks, such as wildfires, or increased temperatures (a chronic risk) that increases acute risks, such as severe storms. Should we require a registrant to discuss how the acute and chronic risks they face may affect one another?

Registrants should be required to consider how chronic and acute physical risks affect one another. In addition, registrants should consider how physical risks affect transition risks. This is important because the physical risks of climate change (acute and chronic) will disproportionately impact Indigenous peoples, poor communities, and communities of color and will increase threats to public health, safety, and welfare, and accelerate social inequities over time. Research from the New York Federal Reserve shows that the geographical distribution of low-income communities and communities of color in the U.S. make them more vulnerable to changes in weather patterns. The same groups are also less able to adapt to climate change because of their more limited access to insurance and credit.[148] This rising inequality also depresses economic growth.[149] This negative feedback loop exacerbates and compounds harm to communities over time and creates increased transition risks to registrants, due to increased reputational risk (from community resistance and public support for climate change policy), as well as regulatory and legal litigation risks, as discussed in question 10, above.

16. Are there other areas that should be included as examples in the definitions of acute or chronic risks? If so, for each example, please explain how the particular climate-related risk could materially impact a registrant's operations or financial condition.
**Note: this question is listed out of numerical order such that case studies and arguments are presented in a logical flow. Responses to questions 12 and 13 are presented after this.*

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[147] A 25,000 metric ton limit is appropriate because the EPA has recognized this threshold as qualification for "large" sources of emissions, and such facilities sum to about 85-90% of overall U.S. emissions - thus capturing a majority of the transition risk within the market for at least U.S. emissions. Further using the EPA threshold will ensure registrants incur minimal cost for disclosure and obviate any confusion regarding qualifying sources. See Mandatory reporting of greenhouse gases: A rule by the Environmental Protection Agency, 40 C.F.R. § 98 (2009). https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-98

[148] Avtar, R., Blickle, K., Chakrabarti, R., Janakiraman, J., & Pinkovskiy, M. (2021). *Staff Reports: Understanding the linkages between climate change and inequality in the United States.* Federal Reserve Bank of New York. https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr991.pdf

[149] Cingano, F. (2014). Trends in income inequality and its impacts on economic growth. *OECD Social, Employment and Migration Working Papers,* 163. https://read.oecd-ilibrary.org/social-issues-migration-health/trends-in-income-inequality-and-its-impact-on-economic-growth_5jxrjncwxv6j-en#page1

Climate-related physical risks (both acute and chronic) have profound consequences on the health, safety, and livelihoods of workers and communities impacted by corporate activities. Accordingly, in our response to question 9, above, we recommend that registrants consider "threats to public health and safety" as a chronic risk. As discussed in the response to question 11, above, both chronic and acute physical risks have profound consequences on public health and worker safety, which increases operational costs, community resistance, and legal, political, and reputational risks faced by registrants.

In addition, we recommend the addition of an example, drawing on the themes from the case study below, that demonstrates the intersection of physical risks and threats to public health and safety. To fully assess the impact of identified physical risks to a registrant's operations and financial condition, registrants should evaluate and provide disclosures of risks to public health and safety arising from identified physical risks and transition activities.

A prime example of this is the increase in costs to manage toxic waste considering increasing flood and storm risk. Legal, operational, political, and reputational risks to registrants are likely to be higher where the pollution risk exacerbates existing environmental justice concerns.

For example, a recent report identified at least 101 coal ash ponds located in a FEMA 100-year flood plain – i.e., areas with at least a 1 percent chance of flooding in any given year.[150] Coal ash contains arsenic, selenium, lead, mercury, boron, and other contaminants known to cause cancer, neurological damage, and/or heart ailments.[151] Heavy rains, hurricanes, and rising groundwater levels can cause ponds to overflow into nearby lakes and rivers, or contaminate groundwater used for drinking and agriculture. A 2008 spill at a Tennessee Valley Authority power plant in Kingston, Tennessee, cost $1.2 billion to clean up and has been linked to the deaths of dozens of workers who contracted cancer and other diseases after responding to the disaster.[152] The 2008 Tennessee accident prompted increased federal regulations for management of coal ash ponds,[153] while lawmakers and regulators in some states, such as Illinois, North Carolina, and Virginia, are requiring utilities to haul ash away from floodplains and prove they have the money to clean up their sites. The example below demonstrates this risk.

[150] Colman, Z. (2019, August 26). The toxic waste threat that climate change is making worse. *Politico.* https://www.politico.com/story/2019/08/26/toxic-waste-climate-change-worse-1672998
[151] Kravchenko, J., & Lyerly, H. K. (2018). The impact of coal-powered electrical plants and coal ash impoundments on the health of residential communities. *North Carolina Medical Journal*, *79*(5), 289-300. https://pubmed.ncbi.nlm.nih.gov/30228133/#:~:text=Over%20the%20past%2030%20years,health%2C%20and%20higher%20infant%20mortality.
[152] Colman, Z. (2019, August 26). The toxic waste threat that climate change is making worse. *Politico.* https://www.politico.com/story/2019/08/26/toxic-waste-climate-change-worse-1672998#:~:text=It%20found%20that%20at%20least,as%20a%20100%2Dyear%20storm
[153] Harvard Environmental Energy and Law Program. (2017, December 15). *Coal Ash Rule.* https://eelp.law.harvard.edu/2017/12/coal-ash-rule/

Duke Energy Corporation:

Duke Energy Corporation ("Duke")[154] is one of the largest U.S. utilities that owns an integrated network of energy assets, including coal fuel.[155] For years, Duke has stored coal ash from energy generation in landfills and ponds that can leak toxins into waterways and groundwater that are sources of drinking water; due to this contamination in certain areas, a number of families living near coal ash pits needed to rely on bottled water for all household uses.[156] As of 2014, Duke had over 100 million tons of coal ash stored in ponds across the state.[157] Coal ash damage to ecosystems, community water supply, and cleanup costs are inseparable from climate risks and should be considered together.

In just the last 25 years, North Carolina has faced two 500-year floods.[158] During the most recent, Hurricane Matthew in 2016, environmental groups expressed concern that flooding could breach some coal ash ponds operated by Duke; the utility said it did not expect this, later admitting that "'an unknown amount of coal ash' had in fact been discharged during the flooding at one of its coal-fired power plants."[159]

On behalf of several community groups, the Southern Environmental Law Center (SELC) negotiated a historic settlement in January 2020 with the North Carolina Department of Environmental Quality and Duke (followed by a settlement in January 2021 with Duke, the North Carolina Utilities Commission (NCUC) and other state agencies, and the Sierra Club),[160] marking the finale of years of administrative and legal actions seeking cleanups in North Carolina.[161]

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[154] Duke Energy Corporation is an $84 billion in market capitalization company with $62 billion in fixed income outstanding, and 27,000 employees. Its ticker is DUK US Equity, FIGI is BBG000BHGDH5, and ISIN is US26441C2044. Duke Energy Corporation has multiple equity tickers, 141 bonds, 16 loans, 2 preferred shares, and 19 municipal bonds within its capital stack.
[155] Duke Energy Corporation. (n.d.). *Energy from coal*. Retrieved June 13, 2022 from https://www.duke-energy.com/energy-education/how-energy-works/energy-from-coal
[156] Henderson, B. (2018, January 12). They've used bottled water to drink, cook, bathe for 1,000 days. When will taps flow again? *The Charlotte Observer.* https://www.charlotteobserver.com/news/local/article194196774.html
[157] Geiling, N. (2016, October 11). North Carolina's record floods could have unexpected environmental consequences. *ThinkProgress.* https://archive.thinkprogress.org/hurricane-matthew-flooding-climate-change-fb980c7c453a/
[158] Browder, C. (2018, September 28). Many NC homeowners find insurance won't cover Matthew, Florence 'double hit'. *WRAL*. https://www.wral.com/many-nc-homeowners-find-insurance-won-t-cover-matthew-florence-double-hit-/17880324/
[159] Geiling, N. (2016, October 11). Toxic coal ash ponds are at serious risk of flooding. *ThinkProgress.* https://archive.thinkprogress.org/toxic-coal-ash-ponds-flood-plain-risk-a04f5e4c9929/
[160] North Carolina Utilities Commission. (2021). *Coal Combustion Residuals Settlement Agreement*. https://starw1.ncuc.gov/NCUC/ViewFile.aspx?Id=53aa44a2-73e0-4908-8c9e-b7fc1663d5e2
[161] Southern Environmental Law Center. (n.d.). *Coal ash cleanup.* https://www.southernenvironment.org/topic/coal-ash-cleanup/

> Duke's net income decreased to $1.37 billion in 2020 compared to $3.755 billion in 2019[162] primarily as a result of impairment charges and revenue reductions related to the $1.1 billion coal combustion residuals (CCR) settlement agreement filed with the North Carolina Utilities Commission (NCUC) to resolve coal ash cost recovery issues.[163] With coal ash cleanup costs to date reported at over $3 billion and forecast to be $9 billion over the life of the cleanup plan,[164,165] this has materially diminished Duke's reported $59 billion for its capital expenditure plan to transition to a clean energy future.[166]
>
> Fully incorporating Duke's coal ash debt obligations adds about $3 billion to Duke's consolidated debt. As a result, S&P downgraded Duke to BBB+ from A-. S&P also downgraded the issue-level rating on the senior unsecured debt of Duke and its subsidiary Progress Energy Inc.[167] to BBB from BBB+ and the issue-level rating on senior unsecured debt at Duke's rated subsidiaries to BBB+ from A-. Additionally, Duke's hybrid instruments, including its junior subordinated notes and preferred stock, were lowered to BBB- from BBB.[168]

The risk of hazardous waste clean-up is likely to extend far beyond coal ash ponds. In 2019, the Government Accountability Office reported that "available federal data on flooding, storm surge, wildfires, and sea level rise suggested that about 60 percent (945 of 1,571) of all nonfederal Superfund National Priorities List (NPL) sites – which have serious hazardous contamination – are located in areas that may be impacted by these potential climate change effects."[169]

A recent study of sea level rise in California indicated that by 2100, at least 400 hazardous facilities including power plants, refineries, industrial facilities, and hazardous waste sites are likely to experience regular flooding events that can potentially expose nearby residents to

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[162] Wall Street Journal. (2022). *Markets: Duke Energy Corp*. https://www.wsj.com/market-data/quotes/DUK/financials/annual/income-statement
[163] North Carolina Utilities Commission. (2021). *Coal Combustion Residuals Settlement Agreement*. https://starw1.ncuc.gov/NCUC/ViewFile.aspx?Id=53aa44a2-73e0-4908-8c9e-b7fc1663d5e2
[164] Falero, M., & Robertson , G. D. (2021). Duke Energy customers won't be charged $1.1B for coal-ash cleanup after NC settlement. *WFAE.* https://www.wfae.org/energy-environment/2021-01-25/duke-energy-nc-officials-announce-coal-ash-expense-deal
[165] Morehouse, C. (2021, January 26) Duke coal ash clean up settlement shifts $1.1B in costs away from North Carolina ratepayers. *Utility Dive.* https://www.utilitydive.com/news/duke-coal-ash-clean-up-settlement-shifts-11b-in-costs-away-from-north-car/593925/
[166] Good, L., & Young, S. (2021, February 11). *Q4/2020 Earnings review and business update*. Duke Energy. https://desitecoreprod-cd.azureedge.net/_/media/pdfs/our-company/investors/news-and-events/2020/4qresults/q4-2020-slides.pdf?la=en&rev=da32750c5af249c59ef7ed73674b2551
[167] Progress Energy Inc. Is a subsidiary of Duke Energy Corporation. Progress Energy's ISIN is US7432631056 and FIGI is BBG000BJ27C4.
[168] Khalid, U. (2021, January 26). S&P downgrades Duke, utilities following coal ash settlement. *S&P Global Market Intelligence.* https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/s-p-downgrades-duke-utilities-following-coal-ash-settlement-62299759
[169] U.S. Government Accountability Office. (2021, May 13). Superfund: EPA should take additional action to manage risks from climate change effects. GAO. https://www.gao.gov/products/gao-21-555t

hazardous pollutants. These facilities are disproportionately concentrated in poor communities and communities of color, such as Richmond, Wilmington, and Oxnard. Local communities have been organizing in these cities to challenge new projects and to phase out or transition existing power plants, refineries, industrial facilities, and hazardous waste sites. This organizing will likely continue and present registrants operating in the area with legal, operational, political, and reputational risks.[170]

12. For the location of its business operations, properties or processes subject to an identified material physical risk, should we require a registrant to provide the ZIP code of the location or, if located in a jurisdiction that does not use ZIP codes, a similar subnational postal zone or geographic location, as proposed? Is there another location identifier that we should use for all registrants, such as the county, province, municipality or other subnational jurisdiction? Would requiring granular location information, such as ZIP codes, present concerns about competitive harm or the physical security of assets? If so, how can we mitigate those concerns? Are there exceptions or exemptions to a granular location disclosure requirement that we should consider?

We are supportive of the requirement in the proposed rule that registrants provide the ZIP code (or similar) location of its business operations, properties, or processes subject to an identified material physical risk.

Further, we recommend that registrants evaluate the proximity of identified physical risks to communities most vulnerable to environmental racism[171] and climate change. Low-income communities and communities of color face overlapping, cumulative consequences of toxic pollution[172] and greater physical vulnerability to the extreme environmental changes brought on by climate change, as discussed above.[173, 174] The intersection of physical risk and consequences

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[170] Sustainability and Health Equity Lab, University of California at Berkeley. (n.d.). *Toxic tides: Sea level rise, hazardous sites, and environmental justice in California.* https://sites.google.com/berkeley.edu/toxictides/home
[171] Environmental racism is defined by Bullard (1999) as one form of environmental injustice: "*Environmental racism refers to any environmental policy, practice or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups or communities based on race or colour"* [emphasis in original]. In Bullard, R. D. (1999). Dismantling environmental racism in the USA. *Local Environment*, *4*(1), 5-19.
[172] Redlined neighborhoods have twice as many oil and gas wells as predominantly white neighborhoods, demonstrating the heightened disparities in communities of color and thus increased risks to companies that locate in these historically segregated neighborhoods that have been centers for pollution. The public health risks associated with wells include "cancers, respiratory diseases, rashes, heart problems and mental health disorders." See Webber, T. (2022, April 22). Redlining tied to more oil,, gas wells in urban areas, according to study. *Los Angeles Times.* https://www.latimes.com/world-nation/story/2022-04-22/redlining-tied-to-more-oil-gas-wells-in-urban-areas-according-to-study
[173] Avtar, R., Blickle, K., Chakrabarti, R., Janakiraman, J., & Pinkovskiy, M. (2021). *Staff Reports: Understanding the linkages between climate change and inequality in the United States.* Federal Reserve Bank of New York. https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr991.pdf
[174] Sustainability and Health Equity Lab, University of California at Berkeley. (n.d.). *Toxic tides: Sea level rise, hazardous sites, and environmental justice in California.* https://sites.google.com/berkeley.edu/toxictides/home

on these communities increases legal and reputational risks for registrants; this evaluation may further aid registrants in identifying emerging policy risks as localities move to protect public health and safety. For example, more governments are limiting new oil and gas wells or restricting how close new oil and gas wells can be to homes, schools, and daycare center playgrounds, including Colorado, Los Angeles County, the City of Los Angeles, and Arlington, Texas. After residents complained about the health problems linked to air pollution from oil and gas wells, Los Angeles County banned new wells in unincorporated areas.[175]

<u>We recommend the following supplemental disclosures related to the location of identified physical risks</u>:

- The proximity of identified physical risks to vulnerable communities[176] and sensitive community locations (schools, hospitals, daycare centers, playgrounds, residential areas, etc.).
- The number and locations of all sources of hazardous waste,[177] chemicals,[178] and/or criteria air pollutants[179] owned or operated by registrant that may be impacted by identified physical risks.
- The locations of Scope 1, 2, and 3 GHG emissions over 25,000 metric tons CO_2e annually wherever it is feasible (i.e., known or reasonably available according to Securities Act Rule 409 and Exchange Act Rule 12b-21).[180]

13. If a registrant determines that the flooding of its buildings, plants, or properties is a material risk, should we require it to disclose the percentage of those assets that are in

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[175] Webber, T. (2022, April 22). Redlining tied to more oil, gas wells in urban areas, according to study. *Los Angeles Times.* https://www.latimes.com/world-nation/story/2022-04-22/redlining-tied-to-more-oil-gas-wells-in-urban-areas-according-to-study

[176] "Vulnerable communities" has no set definition, but Bhatt and Bhatija (2018) list several characteristics that can lead to vulnerability, including lack of access to services; limited economic mobility and or high unemployment; lack of insurance; challenges in accessing services that stem from social, cultural, and/or language barriers; lower literacy and education levels; exposure to environmental hazards ranging from safety to air pollution to lack of access to the outdoors or to exercise. See Bhatt, J., & Bhatija, P. (2018). Ensuring access to quality healthcare in vulnerable communities. *Academic Medicine, 93*(9), 1271-1275. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6112847/

[177] As defined by EPA. (2021). *Learn the basics of hazardous waste.* https://www.epa.gov/hw/learn-basics-hazardous-waste#hwid; registrants should also consider designated Superfund sites under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as well as coal ash ponds managed under the 2015 Coal Combustion Residuals Rule.

[178] For example, those managed under the EPA's Risk Management Plan (RMP) Rule (Section 112(r) of the 1990 Clean Air Act amendments). See EPA. (2021, December 20). *Risk Management Plan (RMP) rule.* https://www.epa.gov/rmp

[179] EPA. (2021, August 16). *Criteria air pollutants.* https://www.epa.gov/criteria-air-pollutants.

[180] A 25,000 metric ton limit is appropriate because the EPA has recognized this threshold as qualification for "large" sources of emissions, and such facilities sum to about 85-90% of overall U.S. emissions - thus capturing a majority of the transition risk within the market for at least U.S. emissions. Further using the EPA threshold will ensure registrants incur minimal cost for disclosure and obviate any confusion regarding qualifying sources. See EPA Greenhouse Gas Reporting Program (GHGRP), 40 CFR Part 98, October 9, 2009. https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-98

flood hazard areas in addition to their location, as proposed? Would such disclosure help investors evaluate the registrant's exposure to physical risks related to floods? Should we require this disclosure from all registrants, including those that do not currently consider exposure to flooding to be a material physical risk? Should we require this disclosure from all registrants operating in certain industrial sectors and, if so, which sectors? Should we define "flood hazard area" or provide examples of such areas? If we should define the term, should we define it similar to a related definition by the Federal Emergency Management Agency ("FEMA") as an area having flood, mudflow or flood-related erosion hazards, as depicted on a flood hazard boundary map or a flood insurance rate map? Should we require a registrant to disclose how it has defined "flood hazard area" or whether it has used particular maps or software tools when determining whether its buildings, plants, or properties are located in flood hazard areas? Should we recommend that certain maps be used to promote comparability? Should we require disclosure of whether a registrant's assets are located in zones that are subject to other physical risks, such as in locations subject to wildfire risk?

We support the proposed requirement for registrants to disclose the percentage and location of assets in flood hazard areas. The location of assets at flood risk is a critical piece of information needed to assess the intersectional impacts of flooding and risks to communities.

As discussed in question 16, above, the legal, operational, political, and reputational risks for managing flood risk and the health and safety consequences for local communities and workers is particularly significant where flood risk and toxic pollution intersect. Therefore, as discussed above, we recommend the following additional disclosure:

- The number and locations of all sources of hazardous waste,[181] chemicals,[182] and/or criteria air pollutants[183] owned or operated by registrant that may be impacted by identified physical risks.

15. Are there other specific metrics that would provide investors with a better understanding of the physical and transition risks facing registrants? How would investors benefit from the disclosure of any additional metrics that would not necessarily be disclosed or disclosed in a consistent manner by the proposed climate risk disclosures?

[181] As defined by EPA (2021). Learn the basics of hazardous waste. https://www.epa.gov/hw/learn-basics-hazardous-waste#hwid; registrants should also consider designated Superfund sites under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as well as coal ash ponds managed under the 2015 Coal Combustion Residuals Rule.
[182] For example, those managed under the EPA's Risk Management Plan (RMP) Rule (Section 112(r) of the 1990 Clean Air Act amendments). https://www.epa.gov/rmp
[183] EPA. (2021, August 16). *Criteria air pollutants.* https://www.epa.gov/criteria-air-pollutants.

What, if any, additional burdens would registrants face if they were required to disclose additional climate risk metrics?

Our responses to questions 10, 12, 13, and 16 above provide detail on additional disclosures that would support assessment of the physical and transition risks facing registrants.

18. Should we define climate-related opportunities as proposed? Should we permit a registrant, at its option, to disclose information about any climate-related opportunities that it is pursuing, such as the actual or potential impacts of those opportunities on the registrant, including its business or consolidated financial statements, as proposed? Should we specifically require a registrant to provide disclosure about any climate-related opportunities that have materially impacted or are reasonably likely to impact materially the registrant, including its business or consolidated financial statements? Is there a risk that the disclosure of climate- related opportunities could be misleading and lead to "greenwashing"? If so, how should this risk be addressed?

We support mandatory disclosure of material climate-related opportunities. As understanding of climate risks grows, so too will investor interest in climate-related opportunities: the growth in capital flows to ESG investments[184] and assets aligned with Paris Agreement targets[185] already bears this out. Just as climate-related financial risks are intersectional with community consequences, so too are climate-related opportunities. Investors and registrants need to scrutinize climate-related opportunities in conjunction with community consequences (and benefits) to evaluate the true value of those opportunities. Requiring registrants to disclose the intersectional community consequences of identified climate-related opportunities can help prevent greenwashing. A 2020 review of greenwashing practices highlights that selective disclosure – for example, only highlighting certain positive environmental benefits of a product while neglecting information about other environmental or social costs – is a primary form of greenwashing.[186]

(1) Climate-related opportunities may have significant community co-benefits.

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[184] Taylor, T. L., & Collins, S. (2022, April 5). Ingraining sustainability in the next era of ESG investing. *Deloitte Insights.* https://www2.deloitte.com/us/en/insights/industry/financial-services/esg-investing-and-sustainability.html
[185] Accident Compensation Corporation, et al. (2021, November 1). 10 new investors join the Paris Aligned Asset Owners group, bringing total signatories to 50 with USD 2.8 trillion total assets. *Paris Aligned Investment Initiative.* https://www.parisalignedinvestment.org/10-new-investors-join-the-paris-aligned-asset-owners-group-bringing-total-signatories-to-50-with-usd-2-8-trillion-total-assets/
[186] de Freitas Netto, S. V., Sobral, M. F. F., Ribeiro, A. R. B., & da Luz Soares, G. L. (2020). Concepts and forms of greenwashing: A systematic review. *Environmental Sciences Europe, 32*(1), 1-12.

Efforts to mitigate the effects of climate change, such as electrification or the switch to renewable energy, may provide significant community and public health co-benefits.[187] This may afford registrants significant reputational benefits, policy incentives, and support from labor groups and local communities. The recent settlement between the Service Employees International Union United Service Workers West (SEIU USWW) and Los Angeles World Airports provides a useful example of this. Expansion of the airport raised significant concerns from labor unions, environmental groups, and other allies regarding the long-term environmental impacts on climate, air quality, noise, and associated health consequences. The settlement includes a package of decarbonization solutions, including phase-out of onsite diesel vehicles, development of on-site renewable power sources, and micro-transit systems for employees to address climate and community concerns in tandem. The co-benefits of addressing climate and community concerns contributed to the successful settlement.[188]

Further, as the public increases calls on companies to address climate-related impacts and invest in the clean-up of pollution, [189, 190] registrants may find reputational benefits in disclosing plans to cease harmful business activities, compensate impacted communities, and take other actions to address the concerns of communities directly impacted by the company's activities.

(2) But climate-related opportunities may also have adverse impacts on the public health, resilience, land rights, and livelihoods of surrounding communities – creating legal, operational, political, and reputational risks for registrants.

Climate-related opportunities that exacerbate local pollution, degrade natural resources, disrespect Indigenous rights, fail to evaluate Scope 1, 2, and 3 emissions, or do not deliver climate-related benefits that a company claims may not deliver on their promise of financial performance.

<u>We recommend the addition of examples based on themes drawn from the cases below to demonstrate the risks faced by companies that do not fully evaluate the intersectional community consequences of identified climate-related opportunities.</u>

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[187] West, J. J., Smith, S. J., Silva, R., Naik, V., Zhang, Y., Adelman, Z., Fry, M. M., Anenberg, S., Horowitz, L. W., & Lamarque, J-F. (2013, September 22). Co-benefits of mitigating global greenhouse gas emissions for future air quality and human health. Nature Climate Change, 3, 885-889. https://doi.org/10.1038/nclimate2009

[188] United Service Workers West. (n.d.). Airport workers win at LAX. *Service Employees International Union*. https://www.seiu-usww.org/airport-workers-win-at-lax/

[189] Ritchie, A., Smith, D., Johnson, J., Ifetayo, J., Stahly-Butts, M., Kaba, M., Simmons, M., Taifa, N., Herzing, R., Wallace, R., & Obuya, T. (2020). Reparations Now Toolkit. *The Movement for Black Lives.* https://m4bl.org/wp-content/uploads/2020/05/Reparations-Now-Toolkit-FINAL.pdf

[190] Alston, B., & Behgam, C. (2022, March 24). *Vanguard's empty promises: How Vanguard funds harm and fuels extractive industry*. ACRE Action Center and LittleSis. https://acrecampaigns.org/wp-content/uploads/2022/03/ACRE-Report-Vanguard_03.22.pdf

Active Energy[191] 'CoalSwitch' Wood Pellet Facility

Wood pellet production, incentivized by favorable treatment of biofuels under the European Union's Emissions Trading Scheme, is a prime example of a climate-related opportunity that is increasingly under fire due to poorly-evaluated climate, community, and ecosystem impacts.[192] For example, in 2021 Active Energy cancelled plans for a wood pellet facility in Lumberton, North Carolina, following local opposition and loss of air permits. Active Energy planned to manufacture CoalSwitch wood pellets –— made from timber largely cut in southeastern North Carolina – that can be burned alongside coal or as a standalone fuel in traditional power plants to reduce emissions.[193] Initial evaluations of the GHG emissions impact of CoalSwitch wood pellets considered only the reduced emissions of pellet users without incorporating emissions from production or loss in forests. Significant local emissions from wood pellet manufacturing (as well as downstream sawmill operations) prompted opposition from many Lumberton residents, a predominantly Native American (Lumbee) community. Robeson County, the county that encompasses Lumberton, suffers higher rates of heart disease, cancer, diabetes, asthma hospitalizations, and infant and child mortality compared with the state average. Ninety percent of the 1,700 residents in the census block containing the facility are persons of color and two-thirds are low-income. Further, the Active Energy facility was planned on a brownfield site with soil and groundwater contamination, located within a 100-year flood zone that was flooded during Hurricanes Matthew (2016) and Florence (2018).[194] Amid a litany of environmental and community issues, Active Energy sold the North Carolina facility in March 2021, after failing to produce any pellets.[195] After the company had announced that it had received a notice of intent to sue by the Southern Environmental Law Center, Active Energy's shares fell 3.3 percent.[196]

Signal International – Post-disaster Reconstruction

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[191] Active Energy's ticker is AEG LN Equity, FIGI is BBG000BCR1Q0, and ISIN is GB00B1YMN108. The company's market capitalization is $13 million, with 40 employees, and no debt.

[192] Gibbens, S. (2021, November 11). Europe burns a controversial 'renewable' energy source: trees from the U.S. *National Geographic.* https://www.nationalgeographic.com/environment/article/europe-burns-controversial-renewable-energy-trees-from-us

[193] Sorg, L. (2022, March 31). Active Energy selling Lumberton wood pellet site. *The Pulse.* https://pulse.ncpolicywatch.org/2022/03/31/active-energy-selling-lumberton-wood-pellet-site/#sthash.L9pQ5ANT.dpbs

[194] Sorg, L. (2020, April 27). Waiting to exhale: Controversial wood pellet plant would burden Lumberton with more pollution. *NC Policy Watch.* https://ncpolicywatch.com/2020/04/27/waiting-to-exhale-controversial-wood-pellet-plant-would-burden-lumberton-with-more-pollution/

[195] Sorg, L. (2022, March 31). Active Energy selling Lumberton wood pellet site. *The Pulse.* https://pulse.ncpolicywatch.org/2022/03/31/active-energy-selling-lumberton-wood-pellet-site/#sthash.L9pQ5ANT.dpbs

[196] Amoakuh, A. (2022, February 10). Active Energy threatened with US lawsuit over alleged water pollution. *Alliance News.* https://www.morningstar.co.uk/uk/news/AN_1644494023498253600/active-energy-threatened-with-us-lawsuit-over-alleged-water-pollution.aspx

The Proposal provides the example of the following climate-related opportunity on page 21366: "climate-related severe weather events may have a positive financial impact on a registrant that conducts post-disaster cleanup and reconstruction." Again, the intersection with community consequences – in this case worker exploitation, safety, and immigration – needs to be considered alongside the opportunity. Signal International, LLC (Signal) – an Alabama-based marine construction firm specializing in the construction of large ocean-going structures such as offshore drilling rigs, production platforms, and barges[197] – engaged in reconstruction of damaged offshore oil rigs along the Gulf Coast following Hurricane Katrina in 2008. However, due to the company's alleged history of mistreatment of workers, exploitation of migrant laborers, and unsafe working conditions, workers at Signal International protested the company's practices, and a successful lawsuit against the company secured one of the largest human-trafficking settlements in U.S. history for $20 million.[198] Shortly thereafter, in July 2015, Signal International declared bankruptcy.[199]

Cordillera Azul National Park

In 2001, the Peruvian government enclosed 1.35 million hectares of the Peruvian Amazon to establish the Cordillera Azul National Park. In 2008, a REDD (Reducing Emissions from Deforestation and Degradation) project was established in the park, generating forest carbon offset credits sold to multinational companies including Shell, British Airways, and more.[200] However, the Cordillera Azul National Park is currently facing a legal challenge from Indigenous Kichwa communities who were not properly consulted during the formation of the project.[201] As a result, the validity of the offset credits generated by this project is in question, creating material legal and reputational risks for the companies that purchased them that may significantly decrease a registrant's share price and the value of the investor's position in those shares.

Mining of minerals to enable clean energy development

The production of minerals to enable electrification of vehicles and renewable energy is likely to increase significantly: the International Energy Agency estimates that mineral

[197] Company Overview of Signal International, LLC. Bloomberg Business. Retrieved February 19, 2015.
[198] Stillman, S. (2021, November 1). The migrant workers who follow climate disasters. *The New Yorker.* https://www.newyorker.com/magazine/2021/11/08/the-migrant-workers-who-follow-climate-disasters
[199] Desai, R. (2015, July 24). Landmark human trafficking case ends with bankruptcy for Signal International, Inc. *Human Rights First.* https://www.humanrightsfirst.org/blog/landmark-human-trafficking-case-ends-bankruptcy-signal-international-inc
[200] *Project Cordillera Azul, Peru.* (n.d.). Shell. Retrieved ___ from https://www.shell.ca/en_ca/motorists/make-the-change-drive-carbon-neutral/what-is-driving-carbon-neutral/cordillera-azul-national-park-peru.html
[201] Forest Peoples Program. (2021, July 1). *Indigenous Kichwa community take Peruvian state and national park to court* [Press Release]. https://www.forestpeoples.org/en/press-release/kichwa-take-Peru-state-PNAZ-court

production will need to quadruple to limit warming below 2 degrees Celsius.[202] Indigenous and tribal peoples are at the front lines of this increasing development. As companies work to expand production of these minerals to meet climate transition goals, conflicts with communities have grown, often due to mining companies' failure to respect the rights of local communities and obtain FPIC from Indigenous groups. A recent report from MSCI found that in the U.S., "97% of nickel, 89% of copper, 79% percent of lithium and 68% of cobalt are located within 35 miles of Native American reservations; culturally significant areas are not limited to reserved lands."[203]

For example, the Resolution Mine in Arizona (owned by Rio Tinto and BHP Billiton) which could supply up to a quarter of U.S. copper demand if completed, is opposed by Native American tribes such as the San Carlos Apache because of the threat it poses to the Chich'il Bildagoteel, a place with spiritual significance to the Apache for generations. Project developers have spent $2 billion on development and permitting of the mine, despite not having obtained consent from the San Carlos Apache Tribe.[204] This is not the only conflict between Rio Tinto and Indigenous peoples; three of Rio Tinto's executives were forced to leave the company in 2020 following a major public uproar for destruction of areas of Indigenous and archeological significance in Australia.[205]

Respect for Indigenous peoples' rights to FPIC are growing, posing significant risks for registrants who fail to obtain FPIC. For example, in 2020 a ruling from Ecuador's Constitutional Court required mining and extractive companies to obtain FPIC from Indigenous peoples and consult with them if mining activity affected their lands, which could affect four new mines planned in the country, including what is slated to be the sixth-largest copper mine in the world. Canada, for its part, recently signed the United Nations Declaration on the Rights of Indigenous Peoples, which includes FPIC as a key principle; additionally, in Canada, many Indigenous peoples have specific constitutional rights as First Nations.[206] Plans for mineral exploration in the "Ring of Fire" region of

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[202] International Energy Agency. (2022). *Mineral requirements for clean energy transitions.* https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions/mineral-requirements-for-clean-energy-transitions
[203] Block, S. (2021, June 3). Mining energy-transition metals: National aims, local conflicts. *MSCI.* https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947
[204] Anaya, S. J. (2014, December 28). Copper mine will hurt tribes and the environment. *AZCentral.* https://eu.azcentral.com/story/opinion/op-ed/2014/12/29/resolution-copper-con/20865771/
[205] Block, S. (2021, June 3). Mining energy-transition metals: National aims, local conflicts. *MSCI.* https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947
[206] Department of Justice, Canada. (2021, September 1). *Principles respecting the Government of Canada's relationship with Indigenous peoples.* https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html

Ontario have already come under fire due to Indigenous rights questions as well as concerns about the loss of peatlands, an important carbon sink.[207]

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?

We support the proposed disclosures regarding the actual and potential impacts of material climate-related financial risks on the registrant's strategy, business model, and outlook, as well as changes to business operations, including the types and locations of its operations. We recommend that the registrant also describe any actual and potential community consequences[208] that result from or intersect with identified climate risks, along with any resultant legal, political, operational, and reputational risks to the registrant's strategy, business model, and outlook.

As discussed in questions 12 and 13 above, understanding the locations and types of operations and relevant changes is important both for assessing physical risks, as well as intersectional risks to communities.

20. Should we require a registrant to disclose climate-related impacts on, or any resulting significant changes made to, its products or services, supply chain or value chain, activities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes, expenditure for research and development, and any other significant changes or impacts, as proposed? Are there any other aspects of a registrant's business operations, strategy, or business model that we should specify as being subject to this disclosure requirement to the extent they may be impacted by climate-related factors?

Yes, it is critical that registrants disclose climate-related impacts on, or any resulting significant changes made to, its products or services, supply chain or value chain, activities to mitigate or adapt to climate-related financial risks, including adoption of new technologies or processes, expenditure for research and development, and any other significant changes or impacts. As discussed above, these changes have the potential to have profound community consequences that are affected by corporate activities, from direct operations to sourcing and value chains.

[207] LaBreque, S. (2022, March 21). Why indigenous peoples are key to ensuring EV revolution doesn't run out of road. *Reuters Events.* https://www.reutersevents.com/sustainability/why-indigenous-peoples-are-key-ensuring-ev-revolution-doesnt-run-out-road
[208] See definition, p. 3.

Climate change will increase the demands on and degradation of agricultural lands, forest resources, freshwater, and coastal and ocean ecosystems – as a source of food, livelihoods, water, and resources for global supply chains.[209] Shifts in sources can increase pressure on natural resources,[210] introduce new land rights conflicts,[211] increase the need for pollution controls and ecosystem protections,[212] and profoundly shift economic conditions.[213] Again, the intersection of community consequences and climate-related financial risks and mitigation and adaptation activities must be evaluated in tandem to assess the real risk to the registrant. They cannot be viewed in isolation.

To provide investors with adequate information to support evaluation of this intersectional risk, we recommend the following additional disclosures:

- The adverse community consequences[214] arising from the registrant's business model and transition plan across registrant's business operations, subsidiaries, and value chains.

38. Should we require a registrant to describe, as applicable, management's role in assessing and managing climate-related risks, as proposed? Should the required disclosure include whether certain management positions or committees are responsible for assessing and managing climate-related risks and, if so, the identity of such positions or committees, and the relevant expertise of the position holders or members in such detail as necessary to fully describe the nature of the expertise, as proposed? Should we require a registrant to identify the executive officer(s) occupying such position(s)? Or do our current rules, which require a registrant to provide the business experience of its executive officers, elicit adequate disclosure about management's expertise relevant to the oversight of climate-related risks?

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[209] IPCC. (2022). Summary for Policymakers. In Pörtner, H.O., Roberts, D.C., Poloczanska, E.S., Mintenbeck, K., Tignor, M., Alegría, A., Craig, M., Langsdorf, S., Löschke, S., Möller, V. & Okem, A. (eds.), *Climate Change 2022: Impacts, adaptation, and vulnerability, 19.* Cambridge University Press. In Press. Also available at https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_SPM_version_report_LR.pdf

[210] As with freshwater supply; see, for example, Kallis, G. (2010), Coevolution in water resource development: The vicious cycle of water supply and demand in Athens, Greece. *Ecological Economics, 69*(4), 796-809. https://doi.org/10.1016/j.ecolecon.2008.07.025 and Hall, N. D., Stuntz, B. B., & Abrams, R. H. (2008). Climate Change and Freshwater Resources. *Natural Resources & Environment, 22*(3), 30-35. https://www.jstor.org/stable/40924924

[211] Forsyth, T., & Schomerus, M. (2007). *Climate change and conflict: A systematic evidence review.* Justice & Security Research Program and London School of Economics. http://eprints.lse.ac.uk/56352/1/JSRP_Paper8_Climate_change_and_conflict_Forsyth_Schomerus_2013.pdf

[212] See, for example, Wang, Y. (2004). Environmental degradation and environmental threats in China. *Environmental Monitoring and Assessment, 90*, 161-169. https://link.springer.com/article/10.1023/B:EMAS.0000003576.36834.c9

[213] As, for example, with increased demand for sources of wood for bioenergy leading to higher prices and greater stress on forests; see, for example, Raunikar, R., Buongiorno, J., Turner, J., & Zhu, S. (2009). Global outlook for wood and forests with the bioenergy demand implied by scenarios of the Intergovernmental Panel on Climate Change. *Forest Policy and Economics, 12*(1), 48-56. https://doi.org/10.1016/j.forpol.2009.09.013

[214] See definition, p. 3.

Yes, registrants should be required to describe the management structure, role, and expertise for assessing and managing climate-related financial risks. As discussed above climate-related financial risks are intersectional with community risks and many issues must be addressed in tandem. Registrants with board or management expertise in environmental justice, Indigenous rights, tribal rights, and stakeholder engagement will be better equipped to evaluate and navigate these dynamic, interconnected issues.[215]

- For management positions and committees responsible for oversight of climate-related financial risks and opportunities, registrants should disclose any staff experience working on environmental justice issues and Indigenous and tribal peoples' rights, as well as expertise with community engagement and dispute resolution.

42. Should we require a registrant to describe its processes for identifying, assessing, and managing climate-related risks, as proposed?

Yes. Effective on-going governance of climate-related financial risks requires disclosure of the processes used to identify, assess, and manage them. This is particularly important with regard to evaluation of the adverse community consequences that intersect with identified climate-related financial risks and opportunities. Consultation, consent, and dispute resolution processes are particularly important with regard to the protected rights of Indigenous and tribal peoples. As discussed in the introduction to this letter, a growing number of banks and financial institutions have made statements and commitments in support of companies that obtain FPIC from local Indigenous and tribal peoples.

As discussed above, we recommend that registrants provide the following disclosures related to processes for identifying, assessing, and mitigating climate-related financial risks:

- Any and all public or community opposition (campaigns, protests, or resistance movements) related to the registrant's contribution to or detraction from the transition to a lower-carbon economy and connected community consequences[216] that may materially impact the registrant's operations; registrant's responses and actions to address such opposition; and statements from complainants on how they assess the response.
- Any and all land rights grievances or complaints filed by Indigenous or tribal peoples in the registrant's areas of operations where climate-related financial risks or climate-related opportunities have been identified or significant Scope 1, 2, or 3 GHG

[215] For example, one of the letter's signatories has called for new leadership at Vanguard to improve its navigation of environmental justice issues. See Alston, B., & Behgam, C. (2022). *Vanguard's empty promises: How Vanguard funds harm and fuels extractive industry.* Action Center on Race and the Economy and LittleSis. https://acrecampaigns.org/wp-content/uploads/2022/03/ACRE-Report-Vanguard_03.22.pdf
[216] See definition of community consequences, p. 3

emissions are expected; the registrant's responses and actions to address such grievances or complaints; and statements from complainants on how they assess the response.

- The names of any and all Indigenous peoples or tribal entities that would be impacted by the adverse community consequences of corporate activities related to identified climate-related financial risks and opportunities.
- A description of any open processes in which the registrant is seeking to consult with or obtain the consent of Indigenous peoples or tribal entities that would be impacted by a planned or in-process activity.
- A list of any and all consultation processes carried out in the past reporting year, including information on what entity carried out the consultation, and if consent was obtained, how the impacted Indigenous peoples expressed that consent.
- A list of any and all legal processes in U.S. and/or foreign jurisdictions related to land rights disputes, consultation or consent processes, or other Indigenous or tribal rights matters.
- A list of any and all projects undertaken that require the relocation of local communities, including any and all compensation, monetary or otherwise, provided in exchange for relocation.

48. If a registrant has adopted a transition plan, should we require it to disclose, if applicable, how it plans to mitigate or adapt to any identified transition risks, including the following, as proposed:
• Laws, regulations, or policies that:
o Restrict GHG emissions or products with high GHG footprints, including emissions caps; or
o Require the protection of high conservation value land or natural assets?
• Imposition of a carbon price?
• Changing demands or preferences of consumers, investors, employees, and business counterparts?

Are there any other transition risks that we should specifically identify for disclosure, if applicable, in the transition plan description? Are there any identified transition risks that we should exclude from the plan description?

Yes, registrants should be required to disclose any adopted transition plan to mitigate or adapt to any identified transition risks. <u>We recommend the following additions to the description of the transition plan [suggested additions in bold and underlined]:</u>

• Laws, regulations, or policies that:

o Restrict GHG emissions or products with high GHG footprints, including emissions caps; or

o Require the protection of **biodiversity,** high conservation value land or natural assets?

o **Protect communities and workers from the impacts of climate change by requiring enhanced pollution controls, protection of Indigenous and tribal people's land rights, worker and public safety controls, and mitigation of environmental justice impacts.**

• Imposition of a carbon price?

• Changing demands or preferences of consumers, investors, employees, and business counterparts?

• **Any increase in adverse social conditions such as increasing inequality or shifts in community perceptions of a registrant's contribution to or detraction from the transition to a lower-carbon economy.**

• **Processes to identify, address, and repair past or on-going harms to communities impacted by climate-related risks and transition activities needed to avoid or mitigate legal, political, operational, and reputational risks**.

61. Alternatively, should we not require disclosure of the impacts of identified climate-related risks and only require disclosure of impacts from severe weather events and other natural conditions? Should we require a registrant to disclose the impact on its consolidated financial statements of only certain examples of severe weather events and other natural conditions? If so, should we specify which severe weather events and other natural conditions the registrant must include? Would requiring disclosure of the impact of a smaller subset of climate-related risks be easier for a registrant to quantify without sacrificing information that would be material to investors?

Climate change poses myriad interconnected risks to registrants which are driven only in part by severe weather events and other natural conditions, as discussed in the examples above. If financial impact metrics are only disclosed for those identified physical risks, investors would lack material information to inform their decision-making. Take the example discussed above of utilities with coal ash ponds at increased flood risk. While examination of the impacts of flood risk may allow the utility to easily estimate the costs of hazardous waste management for its coal ash ponds, this may not reflect the legal risk that the registrant would face due to negative public opinion about coal-based power or community advocacy to address local pollution impacts. Either could have significant impacts on the utility's financial metrics.

107. Should we require a registrant to provide location data for its disclosed sources of Scope 1, Scope 2, and Scope 3 emissions if feasible? If so, should the feasibility of providing location data depend on whether it is known or reasonably available pursuant to the Commission's existing rules (Securities Act Rule 409 and Exchange Act Rule 12b-21)?

Would requiring location data, to the extent feasible, assist investors in understanding climate-related risks, and in particular, likely physical risks, associated with a registrant's emissions' sources? Would a requirement to disclose such location data be duplicative of any of the other disclosure requirements that we are proposing?

Yes, registrants should be required to provide location data for disclosed sources of Scope 1, Scope 2, and Scope 3 emissions if feasible. The provision of location data will enable investors to more effectively assess policy risk to a registrant based on reported GHG emissions.

GHG emissions have been identified in the current Proposal as a critical metric for investors assessing climate risk; a major reason for this is the transition risk that climate change policies pose to registrants with significant GHG emissions. The location of those GHG emissions is a direct determinant of that policy risk because of the variation in existing or potential climate policies and commitments in different jurisdictions. One can hardly argue that increasingly stringent state-level climate policies are more likely in California than Texas, for example.

The overlap of GHG emissions and other criteria air pollutants is a significant consideration for registrants evaluating policy risk (and opportunity). Air pollution and greenhouse gases are often released from the same sources, and activities to reduce GHG emissions also reduce emissions of harmful air pollutants, such as fine particulate matter ($PM_{2.5}$).[217] The public health co-benefits of climate change mitigation policies are well-documented.[218] The presence of public health concerns (particularly air quality concerns) and active social movements to address those concerns where climate policies are under consideration can be an important factor in building the political will to pass and implement those policies. For example, when toxic smog provoked widespread protests in Beijing in 2013, the government began an ambitious effort to reduce emissions from coal-based industry and home heating, resulting in GHG emissions reductions and improvements in air quality much faster than expected.[219] Provision of location data for disclosed sources of Scope 1, 2, and 3 emissions will enable investors to identify where policy risks are heightened due to the intersection with public health concerns.

<u>We recommend that registrants provide:</u>

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[217] Avakian, M. (2013). Reducing greenhouse gas emissions can improve air quality and save lives. *Global Environmental Health Newsletter.* https://www.niehs.nih.gov/research/programs/geh/geh_newsletter/2013/12/spotlight/reducing_greenhouse_gas_emissions_can_improve_air_quality_and_save_lives_.cfm

[218] West, J. J., Smith, S. J., Silva, R. A., Naik, V., Zhang, Y., Adelman, Z., Fry, M. M., Anenberg, S., Horowitz, L., & Lamarque, J.-F. (2013). Co-benefits of mitigating global greenhouse gas emissions for future air quality and human health. *Nature Climate Change, 3*, 885–889. https://doi.org/10.1038/nclimate2009

[219] Lo, J. (2022, April 1). 'Extraordinary progress' - Beijing meets air pollution goals after coal crackdown. *Climate Home News.* https://www.climatechangenews.com/2022/01/04/extraordinary-progress-beijing-meets-air-pollution-goals-coal-crackdown/

- The locations of Scope 1, 2, and 3 GHG emissions over 25,000 metric tons CO_2e annually wherever it is feasible (i.e., known or reasonably available according to Securities Act Rule 409 and Exchange Act Rule 12b-21).[220]

168. Should we require a registrant to disclose whether it has set any targets related to the reduction of GHG emissions, as proposed? Should we also require a registrant to disclose whether it has set any other climate-related target or goal, e.g., regarding energy usage, water usage, conservation or ecosystem restoration, or revenues from low-carbon products, in line with anticipated regulatory requirements, market constraints, or other goals, as proposed? Are there any other climate-related targets or goals that we should specify and, if so, which targets or goals? Is it clear when disclosure under this proposed item would be triggered, or do we need to provide additional guidance? Would our proposal discourage registrants from setting such targets or goals?

We support the requirement in the current Proposal requiring the registrant to disclose whether it has set any targets related to the reduction of GHG emissions and other climate-related targets or goals. This is critical to address concerns about greenwashing related to climate targets. Claims of "net zero" must be disaggregated in order to fully understand how a company may or may not be changing its approach in the face of climate risks and how those changes may have positive or negative impacts for communities.

In addition to the examples listed above, registrants should disclose targets and goals related to addressing adverse consequences to communities and ensuring a just transition.[221] As communities increase their calls on companies to repair climate-related harms on communities and invest in the clean-up of toxic or polluting sites, companies face increasing legal and reputational risks in failing to address community demands. Companies should disclose plans to cease harmful climate-related activities, compensate impacted communities, and address the concerns of communities who have been directly impacted by the company's climate-related

[220] A 25,000 metric ton limit is appropriate because the EPA has recognized this threshold as qualification for "large" sources of emissions, and such facilities sum to about 85-90% of overall U.S. emissions - thus capturing a majority of the transition risk within the market for at least U.S. emissions. Further using the EPA threshold will ensure registrants incur minimal cost for disclosure and obviate any confusion regarding qualifying sources. See Mandatory reporting of greenhouse gases: A rule by the Environmental Protection Agency, 40 C.F.R. § 98 (2009). https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-98

[221] According to the International Labour Organization, a "Just Transition" means "greening the economy in a way that is as fair and inclusive as possible to everyone concerned, creating decent work opportunities and leaving no one behind. A Just Transition involves maximizing the social and economic opportunities of climate action, while minimizing and carefully managing any challenges – including through effective social dialogue among all groups impacted, and respect for fundamental labour principles and rights." See International Labour Organization. (2022). *Frequently Asked Questions on just transition*. https://www.ilo.org/global/topics/green-jobs/WCMS_824102/lang--en/index.htm

activities.[222, 223] A growing number of local and state governments are developing climate policies that explicitly address consequences to communities and advance a just transition. For example, Illinois's landmark Climate and Equitable Jobs Act addresses both equity and the environment, setting a statewide 100% clean energy target, with an emphasis on prioritizing the closure of sources of pollution in environmental justice communities, creating career pathways for people of color in clean energy jobs, and funding community solar projects in low-income neighborhoods.[224] Chicago followed suit with its own 2022 Climate Action Plan.[225] At the beginning of 2021, the Biden administration issued a slew of executive orders focused on environmental justice and a just transition.[226] The rise in government and company action around environmental justice and community and worker benefits (such as career pathways in the clean energy economy for former fossil fuel industry workers) demonstrates the importance of addressing these issues to reduce the transition risk to a registrant.

Conclusion

We support the SEC's laudable efforts to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation by requiring financial disclosures of climate-related financial risks and opportunities. The Proposal provides a valuable starting point to ensure that registrants provide transparency on the financial impacts of climate change and transition activities. Through the examples and recommendations provided in this letter, we provide context and suggestions to improve the rule around one critical gap: the disclosure of community consequences of corporate activities connected to climate-related financial risks and opportunities. Impacts to communities are inseparable from climate risks and the mutually reinforcing feedback between climate risks and community impacts cannot be ignored. Without

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[222] Ritchie, A., Smith, D., Johnson, J., Ifetayo, J., Stahly-Butts, M., Kaba, M., Simmons, M., Taifa, N., Herzing, R., Wallace, R., & Obuya, T. (2020). Reparations Now Toolkit. *The Movement for Black Lives.* https://m4bl.org/wp-content/uploads/2020/05/Reparations-Now-Toolkit-FINAL.pdf

[223] Alston, B., & Behgam, C. (2022). *Vanguard's empty promises: How Vanguard funds harm and fuels extractive industry.* Action Center on Race and the Economy and LittleSis. https://acrecampaigns.org/wp-content/uploads/2022/03/ACRE-Report-Vanguard_03.22.pdf

[224] Illinois State Government. (2021, September 15). *Gov. Pritzker signs transformative legislation establishing Illinois as a national leader on climate action* [Press Release]. https://www.illinois.gov/news/press-release.23893.html

[225] City of Chicago, Office of the Mayor. (2022, April 22). *Mayor Lightfoot announces 2022 Climate Action Plan* [Press Release]. https://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2022/april/ClimateActionPlan.html

[226] For example: The White House Briefing Room. (2021, January 27). President Biden takes executive actions to tackle the climate crisis at home and abroad, create jobs, and restore scientific integrity across federal government. https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/27/fact-sheet-president-biden-takes-executive-actions-to-tackle-the-climate-crisis-at-home-and-abroad-create-jobs-and-restore-scientific-integrity-across-federal-government/; The White House Briefing Room. (2021, January 20). Executive order on protecting public health and the environment and restoring science to tackle the climate crisis. https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/

adequate disclosures of community consequences, registrants are depriving investors of material information that will impact the health of their investments.

As society reorients around the transition to a clean energy economy, investors are paying increasing attention to environmental, social, and governance factors in their investments – and understand that these are interconnected risks. We urge the SEC to respond to the demands of investors for more information related to climate, environmental, and racial justice and community-level impacts, as they are using this information to make investment decisions, to vote proxies, to file shareholder proposals, and to engage directly with registrants.[227]

Respectfully submitted,

Action Center on Race and the Economy
Ocean Conservancy
AmazonWatch

1000 Grandmothers for Future Generations
350 Humboldt

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[227] For shareholder proposals, see, for example: Ceres. (2021, May 19). A majority vote on strong deforestation and climate policy at Bloomin' Brands continues the rush of success for climate proposals in 2021…. *Ceres.* https://www.ceres.org/news-center/press-releases/majority-vote-strong-deforestation-and-climate-policy-bloomin-brands; Ceres. (2021). Ceres. (2021). *Adopt supply chain deforestation policy: 2021 Resolution.* https://engagements.ceres.org/ceres_engagementdetailpage?recID=a0l1H00000BsdKTQAZ; DiNapoli, J. (2021, August 11). Shareholder advocacy group goes after 'environmental racism.' Reuters. ;; DiNapoli, J. (2021, August 11). Shareholder advocacy group goes after 'environmental racism.' *Reuters.* https://www.reuters.com/business/sustainable-business/shareholder-advocacy-group-goes-after-environmental-racism-2021-08-11/; Robinson-Tillett, S. (2020, November 18). Utility publishes first ever 'Just Transition plan' after shareholder pressure. *Responsible Investor.* https://www.responsible-investor.com/articles/utility-publishes-first-ever-just-transition-plan-after-shareholder-pressure; https://www.reuters.com/business/sustainable-business/shareholder-advocacy-group-goes-after-environmental-racism-2021-08-11/; Robinson-Tillett, S. (2020, November 18). Utility publishes first ever 'Just Transition plan' after shareholder pressure. *Responsible Investor.* https://www.responsible-investor.com/articles/utility-publishes-first-ever-just-transition-plan-after-shareholder-pressure

For investor initiatives, guides, advisor services, and legal commentary, see, for example: Kimbrough, L. (2020, June 30). For investors concerned about deforestation, there's a guide for that. *Mongabay.* https://news.mongabay.com/2020/06/divesting-from-deforestation-theres-now-an-investors-guide-for-that/; Mary Robinson Foundation: Climate Justice. (n.d.). Pursuing climate justice within environmental, social and governance investment frameworks. https://media.business-humanrights.org/media/documents/files/documents/Pursuing_Climate_Justice_within_ESG_Investment_Frameworks_FINAL.pdf; Vinson & Elkins (2021, September 22). Scorecards could potentially complicate how corporations and investors address environmental justice. *VE Law.* https://www.velaw.com/insights/scorecards-could-potentially-complicate-how-corporations-and-investors-address-environmental-justice/; Kok, P. (2021, May 18). The rise of environmental justice: The ESG risk you may be missing. *ACA Global.* https://www.acaglobal.com/insights/rise-environmental-justice-esg-risk-you-may-be-missing; Christie, D., Clark, M., & Noyes, E. (2021). Investing for climate justice: an intersectional approach. *Cambridge Associates.* https://www.cambridgeassociates.com/insight/investing-for-climate-justice-an-intersectional-approach/

350 Seattle
350 Wisconsin
350.org
350Hawaii
350Juneau--Climate Action for Alaska
7 Directions of Service
Accelerate Neighborhood Climate Action
Adasina Social Capital
AFGE Local 704
Alabama Interfaith Power & Light
Americans for Financial Reform Education Fund
Animals Are Sentient Beings Inc
Association of Young Americans (AYA)
Between the Waters
Businesses for a Livable Climate
Call to Action Colorado
Capitol Heights Presbyterian
CatholicNetwork US
CCAG
Cedar Lane Environmental Justice Ministry
Center for International Environmental Law
Centre for Citizens Conserving Environment & Management (CECIC)
Citizen's Alliance for a Sustainable Englewood
Citizens United for Renewable Energy (CURE)
CO Businesses for a Livable Climate
COCRN Colorado Community Rights Network
Community for Sustainable Energy
Divest Oregon
Don't Waste Arizona
Due Process of Law Foundation
Earth Guardians
Endangered Species Coalition
Environmental Justice Team, Cedar Lane UU church
Extinction Rebellion Delaware
FracTracker Alliance
Friends of the Earth U.S.
Future Nexus
Giniw Collective
Greater New Orleans Housing Alliance
Greater Park Hill Community

Green Map System
Hands Across the Sand / Land
Healthy Gulf
Honor the Earth
Humboldt Unitarian Universalist Fellowship's Climate Action Campaign
I-70 Citizens Advisory Group
Indivisible Ambassadors
Indivisible Tacoma
Justice for Formosa’s Victims
Justice Institute Guyana
LaPlaca and Associates LLC
Larimer Alliance for Health, Safety and Environment
Long Beach Alliance for Clean Energy
Louisiana Bucket Brigade
Mayfair Park Neighborhood Association Board
Media Alliance
Mental Health & Inclusion Ministries
MN350
Montana Environmental Information Center
Montbello Neighborhood Improvement Association
Mothers Out Front Colorado
Movement Training Network
NC Climate Solutions Coalition
New Mexico Climate Justice
New Mexico Environmental Law Center
North American Climate, Conservation and Environment(NACCE)
North Range Concerned Citizens
Occupy Bergen County (New Jersey)
Palms To Pines Democratic Network
Panhandle Watershed Alliance
Physicians for Social Responsibility Pennsylvania
Physicians for Social Responsibility, Arizona Chapter
Positive Money US
Presente.org
Protect All Children's Environment
PSR Arizona
Public Citizen
Rainforest Action Network
RapidShift Network
Resist the Pipeline

Revolving Door Project
Rise St. James
San Antonio Bay Estuarine Waterkeeper
San Luis Valley Ecosystem Council
Santa Barbara Standing Rock Coalition
Save EPA (former employees)
Save the Pine Bush
SEE (Social Eco Education)
Small Business Alliance
Solar Wind Works
South Asian Fund For Education Scholarship and training Inc
Southwest Organization for Sustainability
Spirit of the Sun, Inc.
Sunnyside United Neighbors, inc (SUNI)
System Change Not Climate Change
Terra Advocati
The Consortia
The Green House Connection Center
The People's Justice Council
The Sunrise Project
Thrive at Life: Working Solutions
Tri-Valley Citizens' Climate Education
Turtle Island Restoration Network
UCAN
Union of Concerned Scientists
Unitarian Universalist Justice Florida
Unitarian Universalists for a Just Economic Community
Unite North Metro Denver
United For Clean Energy
Vote Climate
Wall of Women
Waterway Advocates
WE ACT for Environmental Justice
Western Slope Businesses for a Livable Climate
Wilwerding Consulting, also Co-Chair, Littleton Business Alliance
Women's Earth and Climate Action Network (WECAN)
Womxn from the Mountain
Working for Racial Equity