June 11, 2021

The Honorable Gary Gensler
Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Input on Climate Change Disclosures

Dear Chair Gensler:

I write on behalf of the National Ocean Industries Association or NOIA. An almost 50-year-old organization, we represent all segments of the offshore energy industry. This includes traditional fossil fuels such as oil and gas, primarily in the Gulf of Mexico, but also important new sources of energy like offshore wind. Further, our members include not just energy developers but also the businesses large and small who do the work of building, supplying, and maintaining these projects. In other words, we represent hundreds of thousands of blue-collar and white-collar employees stretching from New England to the Gulf Coast and across the nation.

The offshore energy industry has a strong track record of high environmental, social and governance (ESG) performance, including transparently reporting performance to external shareholders, producing zero emission offshore wind energy and offshore oil and gas with the lowest carbon emissions per barrel of oil, implementing innovative approaches for advancing safety and environmental performance, and supporting local communities through philanthropic initiatives. Just last year, NOIA launched "The NOIA ESG Network" as a platform for learning, collaboration, and continued improvement in ESG, including sharing best practices.[1]

As reflected in our Climate Change Position & Principles,[2] NOIA as an organization supports the efforts of our members in understanding their emissions impacts and setting sustainability goals and targets, assists our members by facilitating collaboration and enhancing organizational capability to support emissions reduction efforts, and seeks to be a constructive partner in the development of thoughtful and balanced national policy to address climate change.

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[1] *See* Year One: NOIA ESG Annual Report, Jan. 2021, *accessible at* https://www.noia.org/wp-content/uploads/2021/01/Year-One-NOIA-ESG-2020-Annual-Report.pdf
[2] *See* NOIA Climate Change Position, *accessible at* https://www.noia.org/wp-content/uploads/2021/05/NOIA-Climate-Change-Position.pdf.

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In responding to the Securities and Exchange Commission's ("Commission") request for input on its evaluation of disclosure rules and goal of facilitating the disclosure of consistent, comparable, and reliable information on climate change, NOIA provides the following broadly responsive comments that also generally address Questions 1, 2, 4, 5, 6, 14, and 15.

While moving toward a potential new regulatory framework, NOIA urges the Commission to maintain flexibility for climate-related disclosures and recognize the significant trends in recent years toward voluntary, transparent, and public climate and sustainability reporting, including through standards established by entities such as the Global Reporting Initiative ("GRI"), Sustainable Accounting Standards Board ("SASB"), and Task Force on Climate-related Financial Disclosures ("TCFD").

The importance of a flexible approach was recently underscored at the Commission's Asset Management Advisory Committee meeting, when a panelist noted that "there are no two companies that are alike when it comes to ESG and…making sure that companies have some flexibility to determine what is material or relevant to them, or important to their respective stakeholders, is really important." The panelist also stated, "it's really important that disclosure is fit for purpose. In other words, that it is designed to provide lenders and investors with the right information that allows them to make informed decisions…. [W]e have increasingly observed that conversations around mandatory ESG disclosure is increasingly discussed as it is able to achieve broader public policy change and that is something that we would encourage caution about."[3]

The breadth of the U.S. economy and the unique attributes of individual companies within economic sub-sectors underscore the need for flexibility in reporting on a company-specific basis and industry-specific standards in any future disclosure actions that the Commission may consider. For the oil and gas industry sector, as it relates to Scope 1 and 2 emissions, this includes disclosure based upon the carbon intensity of operations, or the actual emissions generated per unit of oil and gas delivered to market. Such emissions are commonly reported in carbon dioxide equivalent emissions per barrel of oil produced. This approach encourages higher emitting sources to lower emissions and encourage those with lower emissions profiles to sustain and improve performance.

Given the projected continued demand for oil and gas resources for the U.S. and global economies, this approach would also help enable policy makers and investors to promote and encourage energy production from the lowest carbon sources of oil and gas on a per barrel basis. The U.S. offshore region is recognized as providing among the lowest carbon barrels of the various producing regions.[4] U.S. government efforts should serve to prevent substitution

[3] *See* March 19, 2021 SEC Asset Management Advisory Committee Meeting, Update from the ESG Subcommittee and Panel Discussion of the ESG Subcommittee's Potential Recommendations of Dec. 1, 2020, comments by JP Morgan Chase & Co. Managing Director and Global Head of Sustainability Marisa Buchanan, *accessible at* https://www.sec.gov/files/amac-031921-transcript.pdf.

[4] *See* February 2021 Wood Mackenzie Report on "Carbon emissions performance in US GoM: a low emitter in the crossfire," April 13, 2020 ChemRxiv "Statistical Study of Carbon Intensities in the GOM and PB," and NOIA Fact Sheet on "Fighting Against Climate Change," *accessible at* https://www.noia.org/wp-content/uploads/2021/04/Low-Carbon-Barrels.pdf.

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of U.S. offshore production with barrels from high emitting foreign sources with weak environmental oversight, such as Russia, China, or Iran.

In considering next steps towards potential mandatory disclosure, the Commission should take great care to ensure that its actions surrounding disclosures on climate or ESG more broadly do not lead to an inundation of information in a manner that diminishes the conspicuousness of more material information that is being sought by investors, impede further progress and innovation in voluntary reporting, or divert the Commission away from its core mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

Moreover, uncertainty associated with the impacts of climate on both financial condition as well as physical assets reinforces the need for caution in considering actions regarding disclosures surrounding potential or modelled climate change impacts. As one panelist noted at the Commission's recent Asset Management Advisory Committee meeting, "the idea that we would boil something like…climate risk down to a single number or a single set of numbers…I would worry about false precision," further stating that "there's a lot of uncertainty about climate change and there's certainly a lot of uncertainty when you're looking out to 2050 or beyond. And we just really want to be cognizant of that."[5]

Additionally, the Commission should ensure that its actions do not result in an undermining of the Commission's existing materiality standards that already require public companies to report on material issues, including the following:

- Material factors that make an investment in the company speculative or risky, including a concise explanation of how each risk affects the company[6]
- Material effects that compliance with government regulations, including environmental regulations, may have upon the capital expenditures, earnings, and competitive position of the registrant and its subsidiaries, including the estimated capital expenditures for environmental control facilities[7]
- Known trends, events, demands, commitments, and uncertainties that are reasonably likely to have a material effect on financial condition or operating performance, including material events and uncertainties known to management that are reasonably

[5] *See* March 19, 2021 SEC Asset Management Advisory Committee Meeting, Update from the ESG Subcommittee and Panel Discussion of the ESG Subcommittee's Potential Recommendations of Dec. 1, 2020, comments by American Airlines Managing Director and Head of ESG Jill Blickstein, *accessible at* https://www.sec.gov/files/amac-031921-transcript.pdf. *See also* March 19, 2021 SEC Asset Management Advisory Committee Meeting, Update from the ESG Subcommittee and Panel Discussion of the ESG Subcommittee's Potential Recommendations of Dec. 1, 2020, comments by Edison Electric Institute Senior Vice President for Energy Supply & Finance Richard McMahon. "…the more you get into the detailed modeling and go beyond the corporation to these macro discussions, the more difficult it gets, particularly when you're talking about trying to model things such as how does the impact of an individual corporation impact global temperatures, and things like that. It can get very expensive…the sort of science around climate modeling is evolving and the further that you get away from your primary emissions and you go down that path of secondary and tertiary impacts, the more expensive it is and the harder it is to do accurately." *Id*.

[6] *See* 17 CFR § 229.105 (Risk factors), *accessible at* https://www.ecfr.gov/cgi-bin/text-idx?SID=d5b81d46f558251cb34bdfe68a7bbea5&mc=true&node=se17.3.229_1105&rgn=div8.

[7] Registrants deemed to be smaller reporting companies must briefly describe the business and include, to the extent material to an understanding of the company, costs and effects of compliance with federal, state, and local environmental laws. *See* 17 CFR § 229.101(c)(2)(i) (Description of business) and 17 CFR § 229.101(h)(4)(xi), *accessible at* https://www.ecfr.gov/cgi-bin/text-idx?SID=d5b81d46f558251cb34bdfe68a7bbea5&mc=true&node=se17.3.229_1101&rgn=div8.

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likely to cause reported financial information not to be necessarily indicative of future operating results or future financial condition, as well as any other information a registrant believes is necessary to an understanding of its financial condition, changes in financial condition, and results of operations [8]

- Any material pending legal proceeding to which it or any subsidiary is a party, including certain environmental litigation arising under federal, state, or local provisions[9]
- Extent of the Board's role in risk oversight[10]

In addition to the specific regulations listed above, the Commission's 2010 Climate Change Guidance ("2010 Guidance") noted that legal, technological, political, and scientific developments regarding climate change may create new opportunities or risks for registrants and may create demand for new products or services, or decrease demand for existing products or services, and that in some cases these developments could have a significant enough impact on a registrant's business that disclosure may be required in its Description of Business, Risk Factors, or Management's Discussion and Analysis of Financial Conditions and Results of Operations (MD&A).[11]

The 2010 Guidance further noted that registrants may have to consider whether public perception of publicly available greenhouse gas emissions-related data could expose it to potential adverse consequences to its business operations or financial condition due to reputational damage to a degree that would require reporting under Risk Factor disclosure.[12]

In the U.S. and around the world, there currently are multiple ways in which companies report their greenhouse gas emissions, performance with regard to climate change impacts, climate change mitigation activities, and climate-related risks. While there are efforts underway and progress is being made to standardize these disclosure methods, private sector, public sector, NGO, academic, and non-profit organizations have yet to coalesce around a single set of criteria, and the Commission should exercise restraint from taking any actions that could hinder or otherwise complicate these ongoing efforts.

To the extent that mandatory disclosure of climate or ESG information more broadly is pursued, NOIA strongly encourages the Commission to commit to the following:

- Adhere to the formal notice-and-comment rulemaking process under the Administrative Procedure Act to allow for meaningful public comment on the

[8] *See* 17 CFR § 229.303 (Management's discussion and analysis of financial condition and results of operations), *accessible at* https://www.ecfr.gov/cgi-bin/text-idx?SID=d5b81d46f558251cb34bdfe68a7bbea5&mc=true&node=se17.3.229_1303&rgn=div8.

[9] *See* 17 CFR § 229.103 (Legal proceedings), *accessible at* https://www.ecfr.gov/cgi-bin/text-idx?SID=d5b81d46f558251cb34bdfe68a7bbea5&mc=true&node=se17.3.229_1103&rgn=div8.

[10] *See* 17 CFR 407.407(h) (Corporate governance, Board leadership structure and role in risk oversight), *accessible at* https://www.ecfr.gov/cgi-bin/text-idx?SID=d5b81d46f558251cb34bdfe68a7bbea5&mc=true&node=se17.3.229_1407&rgn=div8.

[11] *See* Commission Guidance Regarding Disclosure Related to Climate Change, February 8, 2010, 75 FR 6290, *accessible at* https://www.govinfo.gov/content/pkg/FR-2010-02-08/pdf/2010-2602.pdf.

[12] *See Id*.

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proposal.

- Embark on a principles-based or performance-based rather than prescriptive approach, rooted in materiality, that provides for the flexibility necessary to support cost-efficient reporting that effectively informs investors and other consumers of information disclosed by the broad array of companies regulated by the Commission.
- Ensure that any new disclosure mandates are grounded in the well-understood, traditional concept of materiality.
- Leverage existing disclosure standards by recognized standard-setters (e.g., GRI, SASB, TCFD) and seek to align disclosures with global standards, but not outsource its rulemaking authority to any third party.
- Provide safe harbor to ensure protection against litigation associated with climate or ESG disclosures given the still-novel and evolving nature of such reporting.
- Provide a phased-in approach to the requirements to allow adequate and reasonable time for companies to collect, process, and disclose the information.
- Operate within the confines of its statutory authority and limit the application of any new disclosure standards to public rather than private companies.
- For any specific disclosures of greenhouse gas emissions, focus on understanding the relative carbon intensity of the respective industry operations.
- Coordinate with regulators at the international level to ensure that reporting regimes provide consistent and investor-helpful information.

In closing, NOIA and the full diversity of its membership are committed to the advancement of principles of innovation, conservation, efficiency, resiliency, mitigation, adaptation, and best practices that must be part of a systematic approach to addressing the climate challenge, and we share a commitment to a high standard of corporate citizenship and continuous improvement in ESG performance. We look forward to continued engagement with the Commission on this issue and appreciate your consideration of the comments herein.

Very respectfully,

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