The Real Estate Roundtable

June 9, 2021

VIA ELECTRONIC SUBMISSION: rule-comments@sec.gov

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

Re: Request for Comment on Climate Change Disclosures

Dear Chair Gensler:

The Real Estate Roundtable (www.rer.org) appreciates this opportunity to submit comments responding to the Commission's "Request for Comment on Climate Change Disclosures" posted on March 15, 2021.[1]

The U.S. real estate sector has an important role as part of a "whole-of-economy" strategy to tackle climate change. Commercial buildings – and the behavioral choices of the tenants and other occupants who live, work, shop, and recreate in them – account for 18% of U.S. primary energy use; 35% of electricity consumed in the U.S.; and 16% of all U.S. CO_2 emissions.[2] In this regard, The Roundtable will continue to advance, develop and refine our longstanding sustainability policy agenda. This agenda is driven by our members' continued commitments to make investment decisions and manage their building portfolios with a "triple bottom line" ethic that respects environmental, social, and profitability goals.

The Roundtable also appreciates that the Commission has its part to play in the Biden Administration's "all-of-government" approach to slash GHG emissions, decarbonize the electric grid, and reach a "net zero" economy by 2050. Improving clarity and consistency to adequately inform the investor community about "*known* material risks, uncertainties, impacts, and opportunities"[3] is an important financial objective to address the global climate crisis.

[1] Acting Chair Allison Herren Lee, Public Input Welcomes on Climate Change Disclosures (March 15, 2021).
[2] U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Commercial Building Basics.
[3] Public Statement, note 1 (emphasis supplied).

RER recommends a "principles-based" approach to corporate reporting and disclosures of climate-related risks in lieu of any prescriptive, "one size fits all" standard. We recommend that the Commission's August 2020 final rule modernizing aspects of Regulation S-K regarding "human capital" disclosures should provide the same paradigm for climate risk reporting. The Regulation S-K rule does not mandate topics that a registrant must disclose. Rather, the Commission provides direction on "potentially relevant subjects" regarding human capital risks that a company's shareholders may deem "material." As the Commission explained in last year's Regulation S-K rule:

> ***Each registrant's disclosure must be tailored to its unique business, workforce, and facts and circumstances …. [W]e did not include more prescriptive requirements*** because we recognize that the exact measures and objectives included in human capital management disclosure may evolve over time and may depend, and vary significantly, based on factors such as the industry, the various regions or jurisdictions in which the registrant operates, the general strategic posture of the registrant … as well as the then current macro-economic and other conditions that affect human capital resources, such as national or global health matters …. ***Given the varied and evolving nature of human capital considerations, we believe that this approach will likely lead to more meaningful disclosure being provided to investors.***[4]

A "principles-based" approach should likewise apply to climate-related disclosures for the same reasons. Like human capital metrics, climate change metrics have – and will continue to – evolve over time. As The Roundtable explains in more detail in the attachment to this letter:

- ***The Commission must be flexible in contemplating climate reporting and disclosure standards for corporate issuers that develop, own and operate income-producing real estate.*** Energy consumption and associated emissions from a building depend on a range of variables – such as a building's location, age, weather conditions, asset-type, tenant mix, available fuel source, state/local regulatory environment, and a host of other factors. There is no single "one size fits all" archetype for real estate companies to measure and report on climate-related impacts and mitigation, because individual buildings and their "occupant mix" are unique environments.

- ***The GHG-related metrics that building owners can most accurately measure and quantify arise from their direct and immediate operations of assets they manage and control on a day-to-day basis.*** Building owners should ***not*** be responsible to measure, quantify or report on ***indirect*** emissions that derive from off-site facilities or the actions of third-parties beyond the owner's control.

  In this regard, the Commission should focus registrants to report on their "direct" emissions ("Scope 1 emissions"), and on the emissions that arise from how much

[4] SEC Release No. 33–10825, Modernization of Regulation S-K Items 101, 103, and 105 (Aug. 26, 2020) available at https://www.sec.gov/rules/final/2020/33-10825.pdf (at p. 50).

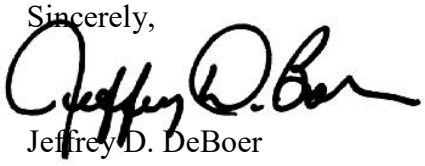
electricity the registrant purchases ("Scope 2 emissions"). No registrant should be ***required*** to report on remote, indirect, and downstream "Scope 3 emissions" attributable to the actions and conduct of third parties. For example, a building owner should not be compelled to report on the energy consumption and GHG emissions that are proximately caused by a tenant conducting its business operations in a leased space within the owner's building.

The Commission should bear in mind that one company's "Scope 3" indirect emissions are the "Scope 1 and 2 emissions" of ***another*** company. Reporting standards will provide much greater consistency and data measurement accuracy if the Commission focuses issuers of securities to report on their ***direct*** climate-related impacts.

- ***The SEC should allow a marketplace of reporting frameworks to thrive, flourish, and evolve. No single reporting framework should be mandated.*** Real estate companies have devoted the time and resources to develop their own internal reporting "infrastructure" to respond to the exact questions and metrics posed by various frameworks such as those developed by Task Force on Climate-Related Financial Disclosures (TCFD), the Sustainability Accounting Standards Board (SASB), the Global Real Estate Sustainability Benchmark (GRESB), and others. Issuers should be allowed to continue to select a reporting framework that best suits their operations. They should be given the flexibility to decide which reporting standards or guidelines are best tailored to their corporate operations, and determine for themselves how to streamline their efforts and achieve efficiencies with international reporting requirements that may be mandated abroad.

Thank you for the opportunity to provide these comments. For more information, please contact Duane J. Desiderio, Senior Vice President and Counsel with The Real Estate Roundtable (ddesiderio@rer.org).

Sincerely,



Jeffrey D. DeBoer
President and Chief Executive Officer

The Real Estate Roundtable

COMMENTS OF THE REAL ESTATE ROUNDTABLE TO THE U.S. SECURITIES AND EXCHANGE COMMISSION'S "REQUEST FOR COMMENT ON CLIMATE CHANGE DISCLOSURES"

RFI Question #1

How can the Commission best regulate, monitor, review, and guide climate change disclosures in order to provide more consistent, comparable, and reliable information for investors while also providing greater clarity to registrants as to what is expected of them?

- The Commission must be flexible in contemplating standards for climate risk reporting and disclosures for U.S. companies falling within its jurisdiction that own and operate income-producing real estate.
- There is no "one size fits all" approach for real estate companies to measure and report on climate-related impacts and mitigation, because individual buildings and their "occupant mix" are unique environments.
- Each individual buildings' energy usage and associated carbon footprint vary widely based on a number of factors, such as:
  - ***Vintage:*** New construction is inherently more energy efficient than old construction. A building constructed in 2020 will have more efficient HVAC, lights, roofs, insulation, and other equipment compared to a similar building constructed in 1990.
  - ***Geographic Location***: Buildings in northern U.S. climate zones require extra days of heating in winter months compared to those in southern locations for the safety, health, and comfort of their occupants. Conversely, buildings in southern, humid geographies require more cooling throughout the year for their tenants' and residents' well-being and productivity.
  - ***Fuel Mix:*** US-EPA data show that the mix of fuels to generate electricity used by buildings and their occupants varies widely across the country – and even within states. These variations are due to differences in available energy resources and regional market prices. Moreover, regional fuel mixes are constantly changing as new renewable energy sources come on line and incrementally displace fossil fuel generation. For example, as of this writing, EPA's data reveals that:
    - ✓ Wind accounts for 17% of electric power in Texas – but none in Florida, where natural gas accounts for 71% of its electricity fuel mix.
    - ✓ Almost half of the Pacific Northwest's electricity is hydro-powered.
    - ✓ Nationally, reliance on coal is shrinking – but still accounts for 70% of the electric source in the grid region covering parts of Illinois and Missouri.
    - ✓ Coal accounts for only 1% of New England's electricity, which is 49% natural gas dependent.
    - ✓ Hydropower accounts for 34.6% of the fuel for electricity in upstate New York – but virtually none downstate in New York City and Long Island, where natural gas comprises 84% of the fuel mix.

  - ✓ Oil is by far Oahu's dominant fuel source (70%), where offshore wind still barely registers (under 3%).
- ➢ ***Tenant/Occupant Mix:*** A commercial building's energy consumption heavily depends on the types of business tenants that lease space or otherwise occupy the building. US-DOE estimates that occupants can control up to 80% of the energy consumed in a commercial building – and tenants' energy usage is generally beyond the asset owner's immediate control due to leasing arrangements. For example, buildings embedded with data centers, trading floors, television studios, retail showrooms, medical facilities, and other "energy intensive" businesses will likely consume more power than buildings with a "typical" office tenant.
- ➢ ***Hours of Occupancy:*** Data from the U.S. Energy Information Administration confirm a logical point: buildings required to stay open continuously, or with longer operating hours, consume more energy than structures with regular and steady "9-5" hours of occupancy.
- ➢ ***State/Local Regulations:*** Dozens of jurisdictions across the U.S. already set varying requirements on real estate companies to measure, report, and disclose the energy and climate impacts of their building portfolios. These existing state, county and city programs are critical for federal policymakers to consider in the context of climate-related corporate disclosures.
- ➢ ***Data Availability:*** The ability of real estate owners to report and disclose "whole-building" energy consumption and GHG emissions depends on whether their tenants are willing to "report-up" to owners the granular energy usage in leased spaces. Moreover, utilities across the U.S. have different rules and standards in providing "aggregated" whole-building energy consumption information directly to building owners.
- ➢ ***Electricity Market Competition:*** Electricity prices vary based on whether wholesale markets are "competitive" or "monopolistic." They are "competitive" in markets overseen by the Federal Energy Regulatory Commission (FERC), where wholesale sellers offer "bids" to utilities to buy electricity generation (which the utility then sells at "retail" prices to ratepayers such as building owners). In contrast, an electricity market is a vertically-integrated monopoly where the generation, transmission, and distribution of electricity remains under a utility's entire control. FERC's orders pertaining to bidding in competitive market structures, or direct sales to ratepayers in monopolistic markets, directly impact the price of available "clean" renewable energy resources for purchase by commercial real estate companies.

- All of the factors above impact the energy consumption of real estate companies, their assets' carbon footprint, how much renewable energy is available for them to purchase, and how they may report to investors on these matters. Flexibility in any climate financial risk disclosure program must enable real estate owners to fully account for these and other variables.

RFI Question #2:

What information related to climate risks can be quantified and measured? Are there specific metrics on which all registrants should report (such as, for example, scopes 1, 2, and 3 greenhouse gas emissions, and greenhouse gas reduction goals)? What quantified and measured information or metrics should be disclosed because it may be material to an investment or voting decision?

- The climate risk information that investors may likely deem "material" is information on energy consumption and GHG emissions that can be most precisely measured, quantified, and expressed through well-accepted metrics. From the perspective of income-producing real estate owners, the GHG-related metrics with the highest accuracy arise from their ***direct and immediate*** operations of buildings they manage and control on a day-to-day basis.

- Building owners – or any other asset owner, for that matter – should ***not*** be responsible to measure, quantify or report on ***indirect*** emissions that derive from off-site facilities or the actions of third-parties beyond an owner's control.

- US-EPA's Portfolio Manager "benchmarking" tool provides the real estate sector's well-established best practice to precisely measure, quantify and track energy consumption and corollary GHG emissions data from buildings. Users of Portfolio Manager generate a document called the ENERGY STAR "Statement of Energy Performance" that provides building owners with the following information for the assets they control and manage:
  - "Site energy," or the amount of energy a building directly consumes as reflected in its utility bills;
  - "Source energy," which quantifies the total amount of raw fuel required to operate a building;
  - "Energy usage intensity," which provides both "source energy" and "site energy" on a kBtu per square foot basis;
  - Carbon dioxide equivalent emissions (CO_2e) in terms of metric tons of a building's GHG emissions per year; and
  - An ENERGY STAR score that rates the building on a 1-100 scale and provides a means to compare its energy efficiency performance to like-kind assets.

Scope 1 and Scope 2 Emissions:

- The Portfolio Manager metrics discussed above provide information relevant to a building's "Scope 1 emissions," defined by US-EPA as the "direct GHG emissions that occur from sources that are controlled or owned by an organization." For example, in the real estate context, fossil fuels combusted on-site by an oil- or gas-fired boiler are frequently measured and tracked as Scope 1 emissions. US-EPA's "scoping" definitions follow the Greenhouse Gas Protocol ("GHG Protocol"), developed by the World Resources Institute ("WRI") and the World Business Council for Sustainable

Development ("WBCSD"). The GHG Protocol is "designed to set the standard" globally for emissions accounting, verification, and reporting.

- The Portfolio Manager metrics discussed above also provide information relevant to a limited band of "indirect" emissions described in the GHG Protocol's "Scope 2 Guidance." US-EPA describes the limited subset of indirect emissions under Scope 2 as emissions attributable ***solely*** to the purchase of electricity, steam, or other heating or cooling source that is generated off-site – and ultimately sold in retail energy markets to commercial building owners, tenant businesses, and other ratepaying consumers.

  - A real estate owner has some control over the amount of electricity it purchases to operate a building – such as in its own office spaces, common areas, and to run the asset's "central" systems for heating, cooling, elevators/escalators, security, etc. This information can be fairly measured and quantified.

  - However, in multi-tenant environments, the owner's control over an ***entire*** building's electricity purchases (and overall energy consumption) may be significantly limited. Accordingly, The Roundtable encourages a principles-based reporting paradigm that provides maximum flexibility on whether a building owner may elect to report – as part of Scope 2 – tenant-based electricity purchases and emissions.

    - A property owner cannot generally control how much electricity a tenant uses to run its operations in the building's separate, component spaces that are governed by a lease. (See Response #1 above, "Tenant/Occupant Mix.") Indeed, building owners generally do not even have access to energy usage information in leased spaces, as this data is typically proprietary to tenants and is not reported "up" to the owner (unless negotiated as terms of a lease). US-EPA reports that some utilities provide "whole-building energy data" to building owners so they can benchmark their assets in EPA's Portfolio Manager tool. However, such utility-provided data (where available) is typically ***aggregated*** across all individual meters in a building to safeguard tenants' privacy. Tenants' ***aggregated*** data does not provide a building owner with ***granular*** data on energy consumed by a specific lessee in a particular leased space.

    - If a real estate company has arrangements with its tenants to gather and collect energy consumption data at the leased-space level – such as through the terms of a "green lease" – then the company might want to report that information to investors. But the real estate company should not be ***compelled*** to do so.

    - While a building owner cannot usually control how much electricity a tenant ***consumes***, sometimes an owner might make ultimate ***purchasing*** decisions for the tenant's electricity bill. Such "purchasing control" can arise where a leased area has a "submeter" specifically covering electricity consumed in the tenant's space, and the building owner has access to that submetered data. In such situations of

"purchasing control," an owner might include in its Scope 2 reporting a tenant's submetered electricity usage. It stands to reason, however, that if a tenant purchases its own electricity, then that is ***not*** owner-purchased electricity and accordingly should not be included in the owner's Scope 2 reporting.

- ➢ Consequently, no climate risk reporting program should impose an obligation ***on a building owner*** to measure and verify energy consumption and associated GHG emissions attributable to tenants' electricity purchases. To the extent that a tenant is a corporate issuer of securities within the SEC's jurisdiction, that tenant should report to investors on ***its own*** emissions that derive from ***its own*** purchased electricity. As a general matter, building owners should not be ***required*** to report on "indirect" emissions information that is better captured directly from a tenant pertaining to operations in a leased space.

- Continuing on the matter of "Scope 2" indirect emissions falling outside of a real estate owner's ability to control: No owner should be required to report on GHGs emitted by the off-site energy infrastructure that transmits and distributes electricity, heating, or cooling to a building. The overall "fuel mix" in a given location that powers the electric grid (or a district-wide thermal energy system) varies widely across the U.S. (See Response #1 above, "Geography" and "Fuel Mix"). An owner has no control over whether off-site, community-wide infrastructure that generates electricity (transmitted to its buildings and tenants) is powered by coal, natural gas, nuclear, hydropower, wind, solar, or some other type of fuel. Therefore, no real estate owner should have a mandatory reporting responsibility with regard to GHGs directly emitted from the electric grid or other off-site public energy infrastructure.

  - ➢ To the extent that an energy company is an issuer of securities that owns, manages and controls operations of the electricity grid, then that grid owner is best postured to report to its investors on ***its own*** direct GHG emissions from its assets.

- Sometimes – as aligned with standards in the GHG Protocol and corollary EPA guidance – a building owner might purchase a market-based "credit" known as a Renewable Energy Certificate ("REC") to reduce Scope 2 emissions from purchased electricity. RECs are specific instruments used in electricity markets where one (1) REC accounts for one megawatt-hour (MWh) of clean electricity generation from a renewable power source. Building owners that may enter into REC purchases do so with the interest to claim the environmental attributes of clean energy generation. RECs may also be bundled with a power purchase agreement (PPA), which "offers buyers cost predictability for their electricity use and promotes growth in the renewable energy sector by offering project developers long-term contracts with predictable revenues."

  - ➢ Purchases of RECs, whether or not connected to a PPA, are voluntary. They are not mandated under any federal law, or state/local law of which we are aware.

Accordingly, any voluntary REC purchases and PPA transactions may be appropriate GHG information to provide to investors – ***at the issuer's discretion***.

Scope 3 Emissions:

- "Scope 3 emissions" are the outer boundaries of indirect GHG emissions. They are the hardest to objectively define, most difficult to quantify, and highly problematic to verify. Given the remote and speculative nature of information on Scope 3 indirect emissions, it would be least valuable to shareholders and unlikely to rise to the level of "materiality" as "known" environmental impacts. Accordingly, Scope 3 GHG emissions information should ***not*** be required from issuers reporting on climate-related financial risks.

  - US-EPA defines the nebulous concept of "Scope 3 emissions" as follows: "Scope 3 emissions are the result of activities from assets ***not owned or controlled by the reporting organization***, but that the organization indirectly impacts in its value chain. Scope 3 emissions include all sources not within an organization's scope 1 and 2 boundary." An overriding theme of these comments is that the SEC should focus climate risk reporting efforts on ***direct*** energy consumption and GHG emissions arising from the ***immediate*** operational control of an issuer's buildings or other facilities. By definition, Scope 3 emissions do not answer this purpose.

  - Scope 3 emissions fall within 15 categories that reach into the "value chain" of an organization's upstream and downstream activities that present improbable and intangible prospects for a reporting issuer to influence. These categories include things like emissions from the use of trucks, trains, and planes that vary based on the efficiency of fuels and the travel preferences of employees and commuters; the "end of life" treatment of products manufactured by third-parties; and emissions from a range of transportation modes used by online retailers to deliver packages to a business. Following these examples, securities issuers in the businesses of manufacturing vehicles, producing transportation fuels, making consumer products, and delivering packages are best situated to report on direct emissions from ***their own*** business activities for which they are immediately answerable. A real estate owner that hires employees who commute or has office supplies shipped to its building should not be responsible to report on such indirect emissions that are better controlled, quantified, and tracked by third parties. In short, "scope 3 emissions for one organization are the scope 1 and 2 emissions of another organizations". It is not the case that swaths of GHG emissions will go unreported to public market participants should issuers have no Scope 3 reporting responsibilities – but rather focus any reporting efforts on quantifying the Scope 1 and 2 emissions.

  - Moreover, "not every [Scope 3 emissions] category will be relevant to all organizations." Reporting on such indirect GHG impacts is likely to generate confusion in the investor marketplace as to ***what*** companies can control ***which***

emissions. By definition, if Scope 3 indirect emissions will not be relevant to a company, then they would not be relevant to its investors. To further complicate matters, some Scope 3 categories require calculations under complex "emissions factors" that consider the "global warming potential" of various GHGs emitted throughout a company's value chain. Reasonable investors cannot be expected to acquire a deep understanding of GHG emissions generated both "upstream" and "downstream" of an issuer's day-to-day business operations, how those emissions are converted to equivalent units of CO_2, and make the connection that an issuer has minimal opportunities to directly control or limit those third-party emissions in the first place.

- EPA cites the GHG Protocol's standard that "scope 3 emissions quantification is ***not*** required." The Hong Kong Stock Exchange likewise makes clear that its issuers have no obligation to report on Scope 3 emissions in their ESG reports. The SEC should strike a similar position. The Commissions should not require companies within its jurisdiction to report on Scope 3 emissions.

RFI Question #4:

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

- Different industries should have different climate change reporting standards that reflect metrics and variables unique to their segment of the economy.
- As discussed above in the answer to Question #1, many of the tools, metrics and protocols used by real estate companies to measures and quantify energy consumption and GHG emissions are highly specific to buildings. They would not readily translate to other economic sectors.

RFI Question #5:

What are the advantages and disadvantages of rules that incorporate or draw on existing frameworks, such as, for example, those developed by the Task Force on Climate-Related Financial Disclosures (TCFD), the Sustainability Accounting Standards Board (SASB), and the Climate Disclosure Standards Board (CDSB)?[7] Are there any specific frameworks that the Commission should consider? If so, which frameworks and why?

- The SEC should allow a marketplace of third-party reporting frameworks to thrive, flourish, and evolve. No single reporting framework should be mandated.
- There is no "one size fits all" reporting framework that works for all companies in the real estate sector, and certainly not across all economic sectors.

- Real estate companies have devoted the time and resources to develop their own internal reporting "infrastructure" to respond to the exact questions and metrics posed by TCFD, SASB, the Global Real Estate Sustainability Benchmark (GRESB), and other frameworks. They should be allowed to continue to select a reporting framework that best suits their operations.

RFI Question #6:

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

- As per our response to Question #5, the SEC should not mandate any reporting framework.
- Each third-party framework should update, improve, and/or augment its disclosure requirements over time, consistent with its own procedures, and allowing ample opportunities for stakeholder input.
- The SEC should not designate a single climate or ESG standard-setter.

RFI Question #9:

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

- See responses to Question ## 4, 5, 6 above.
- No single set of reporting standards should apply to all companies in the U.S., much less globally.
- Different companies will have different regulatory requirements that might not readily translate to U.S. standards.

- While "uniformity" in global and domestic climate risk reporting is a worthwhile goal, it is highly unlikely that any national or international framework will "pre-empt" another to yield homogeneous reporting.
- Companies should be given the flexibility to decide which U.S. reporting standards or guidelines are best suited to their operations, and determine for themselves how to streamline their efforts and achieve efficiencies with international reporting requirements that impose mandatory requirements abroad.

RFI Question #16

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

- For real estate companies, the accepted metrics around "E" reporting are much more developed and quantifiable compared to reporting around the "S" and the "G."
- Companies should be given flexibility to report on their steps and programs to improve equity, diversity, and inclusion within their organizations and in their broader economic sectors.

About The Real Estate Roundtable

Who We Are