Americans for Financial Reform Education Fund

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European Commission

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July 7, 2023

Feedback on the draft delegated regulation on European Sustainability Reporting Standards

Americans for Financial Reform Education Fund and the 51 undersigned organizations write in strong support of finalizing a robust, mandatory set of European Sustainability Reporting Standards (ESRS) that uphold the integrity and ambition of the original draft published in November 2022. We are nonprofit organizations primarily located in North America that specialize in a range of topics including financial regulation, sustainable business and investing, corporate governance and accountability, and environmental, climate, racial, and economic justice policy.

As U.S. stakeholders, we have worked side by side with U.S. investors, among others, to support the development and implementation of investor-driven disclosure standards. The original draft of the ESRS framework—which would have required disclosure of many climate-related data points from all companies—was fit for its intended purpose to elicit reliable, comparable disclosures. Our experience has been that in the absence of mandatory disclosure requirements, investors are often denied access to such information.

We have witnessed this shortcoming in the United States with respect to climate disclosures for over a decade. In 2010, the U.S. Securities and Exchange Commission (SEC) issued guidance instructing companies to disclose self-determined "material" climate risks, to little effect.[1] In the absence of requirements to report comprehensively or to explain why a materiality threshold was not reached, many companies provided incomplete data or ignored the guidance altogether. For this reason, we support efforts by authorities around the world to strengthen mandatory environmental, social, and governance (ESG) reporting requirements for the real economy and the financial sector.

The failure of the SEC's 2010 guidance to achieve sought-after disclosures, among other reasons, prompted the SEC to propose a binding rule in 2022 on climate-related financial risk.[2]

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[1] Andy Green and Andrew Schwartz, "Corporate Long-Termism, Transparency, and the Public Interest," Center for American Progress, 2 Oct 2018. https://www.americanprogress.org/article/corporate-long-termism-transparency-public-interest/. For definitions of materiality, see SEC Release SEC.gov | SEC Proposes Rules to Enhance and Standardize Climate-Related Disclosures for Investors, p.63; and ESRS at European sustainability reporting standards – first set (europa.eu), Annex 1, p.6.

[2] Securities and Exchange Commission, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," 21 March 2022. https://www.sec.gov/rules/proposed/2022/33-11042.pdf

The draft rule specified how and where public companies would have to report climate-related information within SEC filings. In extensive comments on the proposal, nearly all investors and many companies favored an approach that would require mandatory disclosures of certain key metrics from all companies, without the uncertainty and inconsistency introduced by a materiality determination.

Of 320 institutional investors with over $50 trillion in assets under management that commented on specific aspects of the proposal:

- 99 percent supported disclosure of Scopes 1 and 2 greenhouse gas (GHG) emissions from all companies,
- 97 percent supported disclosure of Scope 3 GHG emissions if a company has set a Scope 3 target or if such emissions are material, and
- 95 percent supported disclosure of climate-related targets and goals from all companies that have set them.[3]

Of 60 large public companies that commented on GHG emissions specifically, 91 percent supported requiring Scopes 1 and 2 disclosure irrespective of materiality, with some requesting other accommodations and flexibility.[4] We respectfully request that the European Commission consider the views above, as reflected in the SEC's extensive comment file.[5]

Due to the strong demand for comprehensive and comparable data from investors in U.S.-listed companies, many of which are obligated to report both in the United States and the European Union, we make the following recommendations to the European Commission.

To achieve consistent, comparable disclosure, certain disclosures should be required regardless of materiality.

Disappointingly, the new draft moved climate-related data points (ESRS E1) from an "always-to-be-disclosed" basis to a materiality basis. It also maintained a materiality basis for many important social indicators, which should be mandatory. All companies should be required to provide clear, reliable, and comparable data for critical metrics, including Scopes 1, 2, and 3 GHG emissions, and transition plans and climate targets. Companies should also be required to disclose comprehensive workforce data, including the number of workers the company uses to accomplish its strategy, total cost of the workforce, turnover rate, and diversity data including racial, ethnic, and gender demographics and pay gaps across all seniority levels.[6] These metrics represent core sustainability data points that investors want and need to analyze companies' performance and impact.

[3] Ceres, "Analysis shows that investors strongly support the SEC's proposed climate disclosure rule," 11 Oct. 2022. https://www.ceres.org/news-center/blog/analysis-shows-investors-strongly-support-secs-proposed-climate-disclosure-rule

[4] Ceres, Supplemental comment to the Securities and Exchange Commission on its proposed rule "The Enhancement and Standardization of Climate-Related Disclosures for Investors," 2 Dec. 2022. https://www.sec.gov/comments/s7-10-22/s71022-20152209-320216.pdf

[5] Securities and Exchange Commission, "Comments for The Enhancement and Standardization of Climate-related Disclosures," Accessed 7 July 2023. https://www.sec.gov/comments/s7-10-22/s71022.htm

[6] These are the priority metrics of the Human Capital Management Coalition, a group of asset owners with over $6.6 trillion in AUM that seeks to understand and improve how human capital management contributes to the creation and protection of long-term shareholder value. For more information about their priorities, see slides 22-28 at https://www.hcmcoalition.org/_files/ugd/ee804c_5898f8a9285047b2af29c3b9a0348822.pdf.

If the Commission allows materiality assessments for any metrics or topics, companies should be required to explain any determination of non-materiality.

Explanations for non-materiality determinations provide additional decision-useful information for investors and auditors, as they provide insight into the perspective and assumptions of management and the opportunity to consider the reasonableness thereof. Where materiality assessments are used, the European Commission should require explanation as to why the metric or topic is considered immaterial and what methodology was used in reaching this conclusion.

A comprehensive approach requires the ESRS to maintain all ESG areas.

The ESRS will provide the most benefit to investors if it continues to support transparency across the range of important ESG issues, recognizing that environmental challenges, working conditions, inequality, racial and economic injustice, human rights, and good governance are interconnected and cannot be addressed in isolation.

We appreciate this opportunity to comment, and we urge the European Commission to follow through and finalize ESRS standards that reaffirm its global leadership and deliver this much-needed information to investors, markets, and the public. If you have any questions, please contact Alex Martin (alex@ourfinancialsecurity.org).

Sincerely,

Americans for Financial Reform Education Fund
Center for American Progress
Ceres
E3G
Natural Resources Defense Council
Public Citizen
Sierra Club

350Hawaii
350NYC
Accelerate Neighborhood Climate Action
As You Sow
Businesses for a Livable Climate
Call to Action Colorado
Catholic Network US
CO Businesses for a Livable Climate
Community for Sustainable Energy
Earth Action
Extinction Rebellion US
Green America
The Green House Connection Center
Greater New Orleans Housing Alliance
Harford County Climate Action
Honor the Earth
I-70 Citizens Advisory Group
Indivisible Ambassadors
Interfaith Center on Corporate Responsibility

Larimer Alliance for Health, Safety and Environment
Littleton Business Alliance
MARBE SA
Mayfair Park Neighborhood Association Board
Mental Health and Inclusion Ministries
Micah Six Eight Mission
The Mind’s Eye
Montebello Neighborhood Improvement Association
Oil and Gas Action Network
Oxfam America
Positive Money US
The Phoenix Group
Rise Economy
Save EPA (former employees)
Small Business Alliance
Southwest Organization for Sustainability
Spirit of the Sun, Inc.
System Change Not Climate Change
Texas Campaign for the Environment
Third Act
Unite North Metro Denver
Union of Concerned Scientists
Wall of Women
Western Slope Businesses for a Livable Climate
Womxn from the Mountain
Working for Racial Equity