Social Investment Forum

Comment on the U.S. Environmental Protection Agency Proposed Rule on the Mandatory Reporting of Greenhouse Gases

Docket ID No. EPA-HQ-OAR-2008-0508

Submitted by:
Social Investment Forum
910 17th Street, NW, Suite 1000
Washington, DC 20006
www.socialinvest.org

Contact: Meg Voorhes, Deputy Director, 202-872-5362

I. Introduction

The Social Investment Forum (www.socialinvest.org), the U.S. national nonprofit membership association for professionals, firms and organizations dedicated to advancing the practice and growth of socially responsible investing, is pleased to have the opportunity to comment on the U.S. Environmental Protection Agency proposal for a mandatory greenhouse gas (GHG) emission reporting rule. We welcome the proposed rule as a critical first step in managing and eventually curbing U.S. greenhouse gas emissions; we believe that the rule, especially with certain modifications we are proposing, could greatly assist investors in assessing the climate-related risk of portfolio companies.

A. Background on the Social Investment Forum and socially responsible investing

The approximately 400 members of the Social Investment Forum (SIF) include investment management and advisory firms, mutual fund companies, research firms, financial planners and advisors, brokers-dealers, banks, credit unions, community development organizations, non-profit associations, and pension funds, foundations and other asset owners.

SIF and its members believe responsible investment practice requires the consideration of environmental, social and corporate governance criteria in addition to standard financial analysis. Forum members support socially responsible investing (SRI) through portfolio selection analysis, shareholder advocacy and community investing.

More specifically, socially responsible or sustainable investors use capital to promote responsible corporate governance, to improve corporate disclosure and accountability, to address corporate environmental and social shortcomings—from outsized carbon footprints to human rights violations in the global supply chain, and to support community investing institutions that strengthen low-income communities through access to capital. SRI investors seek to enhance the bottom lines of companies and to deliver sustained long-term wealth to shareholders.

SIF is proud to represent the community that was talking about climate change before it became a widely accepted risk, that has long sounded the warnings about socially irresponsible business practices here and abroad; and that for decades has responsibly and successfully loaned money to low-income communities—without the record foreclosures precipitated by the predatory lending of the last several years.

In January 2009, SIF released an open letter to the Obama administration in which we urged, among other things, that the Securities and Exchange Commission require publicly traded companies to report on environmental, social and governance issues that, if not managed properly, can harm shareholder value and public welfare. (See https://www.socialinvest.org/pdf/Obama_Policy_Pri_2009.pdf.)

Though the SEC requires disclosure of financially material issues, to date this requirement has not been enforced when it comes to reporting on environmental and social issues that may pose significant risks and therefore have material financial impact.

In addition, we believe the financial materiality standard is insufficient to ensure regular and consistent disclosure of long-term social and environmental risks. In our experience, many of these risks are inherently long-term and difficult to address in a short time frame. Most discussions of materiality tend to focus more attention on the short term, and because of this, longer-term or persistent issues tend to disappear from view in securities law enforcement and legal proceedings. We believe that EPA's proposed rule on disclosure of greenhouse gas emissions is a very positive step in reversing this short-term view.

B. The business case for GHG emissions and climate risk disclosure.

We believe that climate change is a long-term environmental risk that will have material financial impact for many companies. At this moment, and to an even greater extent in the future, companies face competitive, physical, regulatory, supply chain, reputational and legal risks as a result of climate change. In general, the disclosure companies currently provide does not provide the information that investors need about how companies assess and manage these risks.

Over the past few years, financial markets have gone from largely ignoring climate-related risks to routinely pricing such risks into the valuation of securities (stocks, bonds, and other financial products). DB Advisors, for example, notes in a February 2009 report that "pricing the carbon externality via cap-and-trade or carbon taxes increases the valuation of 'clean' businesses."[1] By extension, the relative values of companies with high GHG emissions are depressed. DB also stresses the value of regulation in helping to level the playing field and provide the proper incentives for business, which accounts for nearly half of all emissions, to help avoid reaching GHG concentrations that are widely regarded by scientists as tipping points for catastrophic effects. A 2008 report from DB states,

> The aim must be to create a clear long-term regulatory regime that determines a market-driven cost of carbon while at the same time encouraging the development of alternatives. If governments recognize the necessity of creating the right regulatory environment, investors will recognize the opportunity and step in.
>
> There are numerous examples of governments already heading in the right direction. The recent renewal of the Production Tax Credit and Investment Tax Credit in the US assured solar and wind energy the regulatory certainty and proper incentives for continued development of the sector. And one need only look to Germany's Renewable Energy Sources Act for an example of true commitment to climate change mitigation. Germany has created a friendly environment for renewable energies to power up and connect to the grid through its system of feed-in tariffs and transparent and enforceable policies for renewable development. Any successful regulatory frameworks must have these clear, comprehensive procedures to incentivize industry and create capital formation over the longer term.
>
> Achieving this kind of regulatory consistency on a global scale is a massive project, of course. But the world cannot wait. The potential economic, social and political upheavals that could result from a failure to tackle carbon emissions may be irrevocable. Severe

[1] DB Advisors,"Global Climate Change Regulation Policy Developments: July 2008-February 2009," February 2009.

> though it is, the current financial crisis can eventually be fixed, and should not be used as an excuse for inaction.[2]

We recognize that EPA has not proposed to establish a regime that would result in a carbon price. However, the proposal for mandatory reporting establishes the crucial information infrastructure that an emissions-limitation regime would depend on, and that the finance and investment community will find invaluable in making distinctions between relative security valuations based on companies' liabilities and regulatory risks. Moreover, there is also ample evidence that disclosure alone can be an effective regulatory mechanism: The establishment of reporting, under the Emergency Planning and Community Right to Know Act, of substances covered by the Toxic Release Inventory was an important step, and many observers agree that reporting alone provides some incentive for emissions reduction. A 2005 academic study states, "Public release of [TRI data] and increased public scrutiny are believed to significantly contribute to the over 45% reduction in toxic chemical releases since inception of the program and to growing support for this type of informational regulation…"[3] Corporations are increasingly likely to recognize that reducing environmental impacts (and therefore liabilities) has financial value, and that silence on the subject will increasingly be seen as a liability. The foundation of efficient financial markets is information, and as the world grows more aware of the implications of climate change, this information will be increasingly valuable. Moreover, for financial markets, improved reporting is crucial.[4]

Another source of climate-change related risk is litigation. JP Morgan states that the lawsuits, growing in number, that attempt to hold companies liable for greenhouse gas emissions "have implications for equity and credit investors in utilities, manufacturers, energy and transportation companies, and insurers."[5] While the JP Morgan report concluded that plaintiffs were unlikely to be awarded monetary damages in lawsuits over responsibility for climate change, the corporate defendants did face reputational and headline risks from such litigation. A Marsh survey in 2000 disclosed that 85% of firms regarded their brands to be their most important assets.[6]

Disclosure is the first step in creating a regime in which there are appropriate incentives for companies to reduce emissions and make their use of energy cleaner and more efficient. While full disclosure of emissions will mean that some firms—especially those not measuring or aware of emissions now—will need to invest in tracking and reporting systems, that investment is quite likely to pay off as more and more nations establish regimes regulating greenhouse gas emissions. A recent *Economist* survey showed that

---

[2] DB Advisors, "Investing in Climate Change 2009: Necessity and Opportunity in Turbulent Times," Executive Summary, October 2008.
[3] Dinah A. Koehler and John D. Spengler, "The Toxic Release Inventory: Fact or Fiction? A Case Study of the Primary Aluminum Industry," *Journal of Environmental Management,* Volume 85, Issue 2, October 2007, Pages 296-307.
[4] Roberta Salomone and Giulia Galluccio, "Environmental Issues and Financial Reporting Trends: A Survey in the Chemical and Oil & Gas Industries," Fondazione Eni Enrico Mattei, June 2001.
[5]Marc Levinson, "Liability for Climate Change," JP Morgan North America Corporate Research, 29 November 2006.
[6] Rory F. Knight and Deborah J. Pretty, "Brand Risk Management in a Value Context," Marsh Templeton Briefing 05, June 2000.

"a majority of companies favor more environmental regulations—provided there is a level playing field."[7]

Moreover, access to robust data on greenhouse gas emissions enhances the ability of SIF members and other investors to apply their own analyses and models to the risks associated with individual company operations.

II. General Comment on Rule

A. Overview

Given the previous discussion on the business case for GHG emission reporting, we applaud the general scope of the rule and commend the EPA for moving forward on this critical issue. While we note that the EPA has been gathering aggregated information on GHG emissions for the UN Framework Convention on Climate Change, we do not believe this aggregate data is a substitute for the brief set out in the FY 2008 Consolidated Appropriations Act. We believe that the EPA's proposed approach is well thought out, and we are in general agreement with the scope, methodology, reporting frequency and verification proposed, although we have specific suggestions for refinements on some of these points, as detailed in Section III of this Comment. We strongly support the proposed approach of making this an ongoing annual requirement.

B. Importance of company-level reporting to SIF members

One comment we would like to underscore at the outset is the importance to our members of obtaining GHG emission data not only by facility, but also for the entire parent company, particularly if it is publicly traded. As investors, members of SIF are interested in applying analyses of GHG emissions data to investment decisions—particularly those involving publicly traded equities; corporate bonds and private equity can be influenced by climate change issues as well.

When investors buy equities, they are investing in companies, not facilities. Facility-specific data sets, such as those proposed in this Rule, must have readily identifiable information that allows investors and their research providers to link facilities to the ultimate parent company (the investable entity). With such linkages, investors are able to aggregate information from multiple facilities to represent the company with a single GHG emissions number. It is also important that identifiers linking individual facilities to parent companies are flexible and are updated at least annually, as there are always a number of facilities that change hands in any given year.

While our industry would like for EPA to enable the aggregation and dissemination of company level data on GHG emissions, this aggregated data should not substitute for a full release of all facility-level data with appropriate identifiers that will allow for others to aggregate groups of facilities as they see fit. This is because multi-year performance trend analysis is an important tool within the social investing industry for comparing environmental management systems. In order to create a usable data set, pro forma restatements of company environmental performance need to be made following

---

[7] Economist Intelligence Unit, "Countdown to Copenhagen: Government, business and the battle against climate change," 2009.

mergers and spinoffs. In order to accurately calculate these restatements, facility-level data is necessary.

We provide more specific suggestions as to how this identification system can be developed in Section III. G of this Comment.

III. Specific Comments

In this section of our Comment, we provide our responses to several questions specifically raised in the Proposed Rule, along with suggestions for potential enhancements. We note the section of the Proposed Rule to which we refer in the parentheses following each heading.

A. Who Must Report? (Section III. A of the Proposed Rule)

1. **Endorsement**. SIF generally endorses the approach EPA has suggested in the Proposed Rule and appreciates the effort to maximize the emissions reported while minimizing the affected entities. We do have several concerns, however, about the ability of entities to manipulate the system in such a way that would reduce their reporting requirements while increasing, or at least not decreasing, their environmental impacts. We have outlined these concerns below.

2. **Concerns**.
    a. **Definition of a "facility" under the rule**. Our reading of Footnote 30 indicates that companies would not be able to subdivide operations that are co-located in order to define two facilities so that neither exceeded the reporting threshold. We want to confirm that this reading of the Footnote is correct and suggest that EPA guard against such attempts by companies.
    b. We are concerned that even without post-rule writing manipulation, there may be companies with significant emissions that will have facilities below the current proposed threshold. **We believe that there should be some overall company threshold above which substantially all emissions by the company must be reported.**
    c. **Alternative suggestions to address this concern**:
        i. Two tier thresholds. If a company has overall emissions above X (probably higher than 25,000 metric tons of CO_2e) then any facility owned by that company would have to report if it had emissions higher than Y (a number lower than the current facility threshold).
        ii. Any publicly traded company must report emissions (and purchased electricity, see suggestion below in Section B of this Comment) for all facilities. If facilities fall below the facility threshold in the Proposed Rule, the company may report all otherwise non-reporting facilities in a single company record.
        iii. A single-tier company threshold for reporting company totals in addition to the current requirements in the Proposed Rule. Any company with total emissions above X must report as a company. For large companies with facilities already reporting, this would be an additional requirement. For the purposes of

this rule, "company" would be defined as any legally incorporated entity. Companies would only be responsible for reporting their direct emissions and their direct purchase of electricity. They would not report emissions or electricity purchases from any subsidiaries.

d. **Supporting Rationale**: As investors, we are concerned with comprehensive and consistent information across the companies we evaluate. While any database of this nature will likely have distortions, the more comprehensive the data, the more possible it is for investment analysts to control for those distortions. The current Proposed Rule, while a good start, has the very real potential to capture only a portion of publicly traded company emissions. One can easily imagine a scenario where publicly traded companies with identical levels of GHG emissions corporate-wide could nonetheless report widely varying percentages of those emissions based on the size of their facilities. The more the EPA's final rule covers within a given company's emissions, the less distortion present and the more comparability possible within investment analysis.

B. What Do I Have To Report? (III. C)

1. **Endorsement**. We generally endorse the requirements in the Proposed Rule for what must be reported. We do have suggestions for expanding and clarifying these requirements.

2. **Suggested Enhancements**.
   a. **Purchased Electricity**. We propose expanding the mandatory disclosure called for in the Proposed Rule to include quantities of purchased electricity. Our primary interest in supporting the Proposed Rule is in using data on emissions related to climate change, and we realize that electricity consumption, particularly purchased electricity, may represent a significant portion of the overall climate change footprint of a company's operations. Further, while the emissions from electricity are captured elsewhere within the reporting framework (being disclosed by the electricity producers), the demand for electricity is what prompts the construction and operation of generation facilities. As mentioned elsewhere in our comments, we understand that certain distortions are likely within this kind of data set, but we believe that disclosure of purchased electricity may be a reasonable first step toward capturing the direct emissions impact of electricity use by facilities in a specific region.
   b. **Confidential Business Information**. We agree that the basic information required to be disclosed under the Proposed Rule should not be allowed to constitute "confidential" information. To do so would undermine the primary purpose of the Proposed Rule: providing the public information on the greenhouse gas management practices of certain facilities and companies. We urge EPA to hold a firm line in relation to comments it may receive from certain industries and resist efforts to broaden the definition of "confidential" information. In addition, confidential information should not include necessary facility and corporate identifiers helpful in relating facilities to their ultimate parent companies. If EPA determines that in particular cases detailed data reported by a facility does legitimately constitute confidential information, then EPA should seek ways to aggregate the data in such a way

as to make disclosure to the public possible while protecting any legitimate concerns of the facilities in question.

3. **Supporting Rationale**. Consistent with our overarching theme in this document, SIF believes that investors need data sets that are as comprehensive as possible. Our suggestions regarding what should be reported seek to further this concept by ensuring that the final data set is as complete as possible.

C. Frequency and year of reporting (IV. F))

1. **Endorsement**. We fully endorse the year and frequency of reporting as it is currently expressed within the Proposed Rule. With regard to EPA's presentation of two options that may be chosen given a delayed implantation of the Proposed Rule, we support the first option, which would still provide data for emissions from 2010 using the 'best available data.'

2. **Concern**: We question why engine manufacturers are allowed to delay reporting until the 2011 model year. Since engine manufacturers will report an emissions rate rather than absolute emissions levels, we presume that manufacturers can calculate and disclose the rates for engines they manufacture for the 2010 model year by March 31, 2011.

3. **Supporting Rationale**: We support the requirement of annual reporting, as investors typically look to analyze company performance data on an annual basis. Additionally, if the implementation of the proposed rule is delayed, we favor the first of two options as it still provides investors with important company data sooner.

D. Verification requirements (IV. J. 1)

1. **Endorsement**. We endorse the verification requirements set forth by EPA in the Proposed Rule. With regard to certification, we support Option 3 as proposed within the Rule.

2. **Supporting Rationale**: We find the proposed verification requirement to be reasonable and appropriate in its attempt to ensure strong data quality. As investors, we seek high quality data, but also desire to reduce reporting burdens if possible. We agree that, at this time, it is not absolutely necessary for data from reporting sources to be third-party certified, and that self-certification may suffice, with verification provided by EPA.

E. Duration of program (IV. K)

1. **Endorsement**. We strongly endorse the program duration as described in the Proposed Rule.

2. **Supporting Rationale**: Investors seek clarity and certainty in regulatory frameworks in order to make accurate investment decisions that incorporate proper market signals. Given the significant risks and opportunities that companies face from the long-term problem of climate change, requiring GHG emissions reporting for only a short period of a few years would be of little utility

to investors that seek to gain an ongoing understanding of company emissions levels and how those emissions are being managed. Requiring mandatory reporting on an ongoing basis is necessary to gain high quality information.

F. Data Collection: Data Collection Methods and Duplicate Reporting of GHG Emissions to EPA (VI. B. 1)

1. **Endorsement**: SIF is not interested in requiring reporters to do more work than necessary in reporting GHG emissions. However, we are interested in the proposed GHG data set being as complete as possible.

2. **Proposed Enhancement**: We suggest that the final Rule make an explicit commitment to *one* of the following:
    a. Any GHG data reported to another EPA program will be incorporated into the GHG data set by EPA in a manner that is completely consistent with the definitions of the data set; or
    b. EPA will make the GHG data set created under this Rule the primary reporting mechanism and other EPA programs will use this data for their purposes.

3. **Supporting Rationale**: Investors are interested in a complete data set that facilitates apples-to-apples comparisons across a wide universe of companies. The data set created under this Proposed Rule needs to be as complete and consistent as possible. Any system that would require users of GHG emissions data to search and aggregate data from multiple sources within EPA would significantly decrease the utility of the new GHG emissions data set.

G. Data Collection: Data Submission, Unique Identifiers for Facilities and Units (VI. B. 2 and 3).

1. **Endorsement**. Electronic submissions of data, combined with an assigned facility ID and a PIN or electronic signature, creates a useful environment for greatly improving data quality and the ability to easily aggregate facilities within a corporate family.

2. **Concerns**. As noted above in Section II.B of this Comment, our members wish to obtain GHG emission data not only by facility, but also for the entire parent company, particularly if it is publicly traded. Investor interest in GHG emissions data at the level of the publicly traded entity provides some specific challenges for reporters under the proposed rule, for EPA in receiving and disseminating data, and for users of the data. Fortunately, all three groups have some experience with other EPA data sets (e.g. the EPA Toxic Release Inventory) from which many lessons have been learned and can be appropriately leveraged to improve the GHG data set from its inception, as described below. (Information contained within the Toxic Release Inventory data set, which investors have used for many years, provides a basic ability to aggregate to the parent company, but falls short in certain respects.)

3. **Proposed Enhancements**.
    a. EPA should commit to a quality assurance process that specifically confirms that facility identifiers match the PIN or electronic signatures

used at the time of submission and refers mismatches back to the facility for resubmission.

b. EPA should publish a list of identifiers for each and every facility that reports under the Proposed Rule or under any other EPA regulation (e.g., Toxic Release Inventory, acid rain reduction program, etc.). This facility data should be updated regularly throughout the year as new identifiers are assigned. Inclusion of a facility identifier in the GHG data set should be interpreted by any user of that data set as confirmation that the ID correctly matches the central list of facilities and their IDs. This facility list should also include any descriptive material that will assist users of the facility ID in understanding the scope of that ID. (Footnote 30 to Section III. A of the Proposed Rule describes the possible scope of a facility in such a way that descriptive information regarding the facility is completely appropriate.)

c. Identifiers consistent with the facility identifiers need to be assigned and used for “company level” GHG submissions where the Proposed Rule requires such submissions in the place of facility submission (e.g. vehicle manufacturers).

d. Consider requiring any owner of multiple facilities to keep records of final reports submitted under this rule, along with a definitive list of EPA facility IDs for facilities that it owns. We envision a system where publicly traded companies would be required to maintain a list of facility IDs for all their subsidiaries, whether owned directly or indirectly, and to provide this list to shareholders upon request. In this way, the ultimate owner of facilities would be able to definitively answer questions about which facilities are part of their corporate families in terms of EPA IDs.

3. **Supporting Rationale**: the ability of users to aggregate information from multiple facilities into a single corporate profile is directly affected by the accurate use of identifiers and access to a definitive list of all identifiers in use. The proposed enhancements improve the accuracy and utility of identifiers.

H. Data Collection: Delegation of Authority to State Agencies to Collect GHG Data (VI. B. 6)

1. **Endorsement**. We fully endorse the Proposed Rule on requiring submission of data directly to EPA. We oppose any decision to delegate data collection and QA to the states under existing CAA guidelines.

2. **Supporting Rationale**: Delegating the primary data collection tasks to the states could undermine the data quality and consistency: state budgets are under tremendous pressure in the current economic environment, and dedication of necessary resources to complete any such delegation from EPA is far from certain. Moreover, delegating data collection to the states would insert an intermediary and extra step in the process and would therefore delay the data’s receipt and aggregation at the national level and release to the public. Timeliness is particularly important to investors. To the extent possible, investors prefer information that is up to date, and any delay decreases the utility of data. From our perspective, there is no reason or advantage in delegating data collection to the states.

I. Data Collection: Submission Method (VI. B. 7)

1. **Endorsement**. We fully endorse the flexibility expressed within the Proposed Rule for enhancements to the process for submission and dissemination of data based on new technologies as they become available. XML is cited as a specific example and may be useful in data submission in the future.

2. **Proposed Enhancements**.
   a. Public Accessibility to the Entire Data set. We propose that EPA make the entire data set available in a single annual CSV (comma separated value) format for download from the website. If the file is of such a size that either the download of the entire file, or the use of the entire file in typical off-the-shelf data software would be problematic, we suggest that a series of related files be made available so that potential users can easily download all relevant records through multiple files with assurance that no records have been missed.

3. **Supporting Rationale**: While EPA-supported online tools such as EnviroFacts and ECHO are useful for relatively small data queries, certain users, including many from our investor community, need greater unimpeded access to entire sets of data that are very difficult to import through these front-end tools. The easy availability of the entire data set is extremely important to these users, who are often intermediaries for many other organizations wishing to make use of the data.