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December 14, 2021

Gary Gensler
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
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Dear Chairman Gensler,

I am writing regarding an alarming recent report indicating that corporations may be misleading investors and the public about their executive compensation by using loophole-ridden climate metrics tied to CEO pay while continuing to cause, and profit off of, environmental destruction.[1] On October 10, 2021, *The Washington Post* reported that many corporations that ostensibly tied executive compensation to climate goals, including fossil fuel companies like Marathon Petroleum, Chevron, and Occidental Petroleum, were using easily manipulated metrics and shifting goalposts that guaranteed high bonuses for executives even when the corporations caused severe environmental damage. These potentially deceptive environmental, social, and governance (ESG) metrics pose a serious problem: they have the potential to mislead investors and the public on the terms and conditions under which executive bonuses are paid to top company officials. I am requesting that the Securities and Exchange Commission (SEC) investigate this matter.

In 2018, Royal Dutch Shell became one of the first companies to link ESG factors to executive pay,[2] winning widespread praise for the move, including an op-ed arguing that the company was "putting its money where its mouth is."[3] However, a 2021 study into the ESG incentives of Shell, BP, Chevron, and ExxonMobil found that, because the CEOs of these fossil fuel companies had significant personal financial stakes in their companies, the financial profits from share

[1] Washington Post, "Despite spills and air pollution, fossil fuel companies award CEOs for environmental records," Douglas MacMillan and Julia Ingram, October 10, 2021, https://www.washingtonpost.com/business/interactive/2021/fossil-fuel-climate-bonus/.
[2] CNBC, "Big Oil CEOs have a personal reason to put more focus on less fossil fuels," Bob Woods, October 17, 2021, https://www.cnbc.com/2021/10/17/big-oil-ceos-have-personal-reason-to-focus-more-on-less-fossil-fuels-.html.
[3] CNN, "Shell is tying executive pay to carbon emissions. Here's why it could create real impact," Radhakrishnan Gopalan, John Horn, and Todd Milbourn, December 14, 2018, https://www.cnn.com/2018/12/14/perspectives/shell-executive-pay-carbon-emissions/index.html.

ownership and the salary increases from increased fossil fuel consumption significantly outweighed the ESG incentives.[4]

Marathon Petroleum, one of the "world's most egregious fossil fuel lobbying companies preventing policy-based climate action,"[5] paid its chief executive Gary Heminger $1.9 million between 2011 and 2020 for meeting environmental goals, awarding bonuses in nine of these ten years.[6] In 2018, the corporation paid Heminger $272,251 for "excellence in environmental, personal safety and process safety improvement," the same year that a Marathon Petroleum pipeline released 1,400 barrels of diesel fuel into an Indiana creek.[7] Marathon used easily manipulated metrics – in this case counting the number of "environmental incidents" – to obscure the scale of these spills, ensuring that its executives would receive high compensation and its narrative of corporate sustainability would remain pristine.

Chevron also awarded its CEO bonuses for meeting environmental goals in every year since 2018, shelling out $968,000 to its chief executive Michael Wirth for meeting environmental, health, and safety goals[8] despite Chevron's poor record. In 2018, Chevron's refinery in Richmond, California, which one environmental activist called a "textbook example of an environmental justice community,"[9] had nine flaring incidents, its highest level in 12 years.[10] Chevron is currently facing an FTC complaint from environmental activists over deceptive false advertising,[11] and their ads "Human Energy" and "We Agree," were cited in recent lawsuits from four U.S. states and the District of Columbia alleging corporate "greenwashing."[12]

These corporations are just a small sample of the companies using ESG metrics to reward their top executives without meeting the commitments that they appear to be making to investors and

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[4] Energy Research & Social Science, Volume 79, "White knights, or horsemen of the apocalypse? Prospects for Big Oil to align emissions with a 1.5 °C pathway," Dario Kenner and Richard Heede, September 2021, https://www.sciencedirect.com/science/article/pii/S2214629621001420.

[5] Influence Map, "Climate Funds: Are They Paris Aligned?" August 2021, p. 3 and p. 15, https://influencemap.org/report/Climate-Funds-Are-They-Paris-Aligned-3eb83347267949847084306dae01c7b0.

[6] Washington Post, "Despite spills and air pollution, fossil fuel companies award CEOs for environmental records," Douglas MacMillan and Julia Ingram, October 10, 2021, https://www.washingtonpost.com/business/interactive/2021/fossil-fuel-climate-bonus/.

[7] *Id.*

[8] *Id.*

[9] The Guardian, "Richmond v Chevron: the California city taking on its most powerful polluter," Susie Cagle, October 9, 2019, https://www.theguardian.com/environment/2019/oct/09/richmond-chevron-california-city-polluter-fossil-fuel.

[10] KQED, "Chevron's Richmond Refinery Flaring Incidents at Highest Level in More Than a Decade," Ted Goldberg, March 18, 2019, https://www.kqed.org/news/11733638/chevrons-richmond-refinery-flaring-incidents-at-highest-level-in-more-than-a-decade.

[11] World Oil, "Chevron accused of 'greenwashing' by environmentalists in federal complaint," Kevin Crowley, March 16, 2021, https://www.worldoil.com/news/2021/3/16/chevron-accused-of-greenwashing-by-environmentalists-in-federal-complaint.

[12] Reuters, "Green groups file FTC complaint against Chevron over climate claims," Valerie Volcovici, March 16, 2021, https://www.reuters.com/article/us-usa-ftc-greenwashing/green-groups-file-ftc-complaint-against-chevron-over-climate-claims-idUSKBN2B82D7; World Oil, "Chevron accused of 'greenwashing' by environmentalists in federal complaint," Kevin Crowley, March 16, 2021, https://www.worldoil.com/news/2021/3/16/chevron-accused-of-greenwashing-by-environmentalists-in-federal-complaint.

the public. In 2020, 51% of S&P 500 companies used ESG metrics as part of their executive compensation plans,[13] and of these companies, nearly 70% met the metrics to pay annual executive incentives at or above target.[14]

Corporations including Marathon and Chevron use ESG metrics in both proxy shareholder filings filed with the SEC and public statements to reinforce their images as environmentally friendly companies even when they fall below industry averages or contribute to major environmental incidents.[15] In a proxy statement to investors and the SEC, Chevron disclosed that the company met or exceeded expectations for "process safety and environmental" factors included in executive compensation due to "loss of containment performance and spill volumes better than Plan," in 2018, the same year that the Chevron Richmond refinery had nine flaring incidents.[16] In its 2018 Sustainability Report, Marathon Petroleum boasted that "a culture that champions environmental stewardship comes from the top," and highlighted twice in the report how the number of designated environmental incidents in Tiers 3 and 4 (the more severe incidents) decreased – the same year as the Indiana creek spill.[17]

If the environmentally-friendly narratives sold by these corporations, and the promises that they would hold their top executives to stringent environmental quality standards, are found by SEC to be deceptive or fraudulent, they would represent a violation of the Securities Act of 1933, which bars corporations from making "any untrue statement of a material fact or to omit to state a material fact."[18]

The increasing use of ESG metrics underscores the need for accountability and standardization from the SEC. In June 2021, SEC Commissioner Allison Herren Lee praised boards that tied executive compensation to ESG metrics, calling it "one of the most powerful tools they have to make real progress on ESG goals,"[19] and in March 2021, the SEC established the creation of a Climate and ESG Task Force in the Division of Enforcement to "proactively identify ESG-related misconduct."[20] Former Acting Director of the SEC's Division of Corporation Finance

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[13] CNBC, "Big Oil CEOs have a personal reason to put more focus on less fossil fuels," Bob Woods, October 17, 2021, https://www.cnbc.com/2021/10/17/big-oil-ceos-have-personal-reason-to-focus-more-on-less-fossil-fuels-.html.

[14] Willis Towers Watson, "New research finds progress on the use of ESG incentive metrics," Robert Newbury and Don Delves, March 27, 2020, https://www.willistowerswatson.com/en-US/Insights/2020/03/New-research-finds-progress-on-the-use-of-ESG-incentive-metrics.

[15] Securities & Exchange Commission, Chevron Corporation, Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934, May 29, 2019, https://www.sec.gov/Archives/edgar/data/0000093410/000119312519106207/d581752ddef14a.htm#toc581752_45.

[16] *Id.*

[17] Marathon Petroleum Corporation, "2018 Sustainability Report," 2018, p. 34, p. 48, https://www.marathonpetroleum.com/content/documents/Citizenship/2018/Sustainability_Report_10_21.pdf.

[18] Securities Act of 1933 Section 10b-5, as implemented by SEC Rule 10b-5, 17 C.F.R. § 240.10b-5.

[19] Securities & Exchange Commission, "Climate, ESG, and the Board of Directors: 'You Cannot Direct the Wind, But You Can Adjust Your Sails," Allison Herren Lee, June 28, 2021, https://www.sec.gov/news/speech/lee-climate-esg-board-of-directors.

[20] Securities & Exchange Commission, "SEC Announces Enforcement Task Force Focused on Climate and ESG Issues," press release, March 4, 2021, https://www.sec.gov/news/press-release/2021-42.

John Coates, in March 2021 remarks about ESG disclosures, noted that there was a lack of "consistent, comparable, and reliable ESG information" available to investors.[21] I am a strong supporter of providing investors and the public with climate-related disclosures and using the SEC as a valuable tool to increase climate accountability. My Climate Risk Disclosure Act would require every public company to disclose its greenhouse gas emissions, the total amount of fossil-fuel related assets it owns or manages, and its risk management strategies for the risks posed by the climate crisis.[22] The SEC's increased focus on ESG-related misconduct is a positive development, but the SEC must act to ensure that easily manipulated ESG metrics for executive compensation do not undermine investor protection.

In order to better understand how the Commission plans to regulate the use of climate change and other ESG metrics in executive compensation, and whether public companies may have been misleading investors and the public about the terms and conditions of executive compensation relating to these ESG goals, we ask that you respond to the following questions by Friday, January 7, 2022:

1. On October 10, 2021, *The Washington Post* highlighted several companies including Marathon Petroleum, Chevron, Valero, Phillips 66, and Occidental Petroleum that awarded high executive bonuses based on ESG factors while continuing to profit off environmental destruction. Has the SEC Division of Enforcement opened an active investigation into whether any of these claims may have misled investors or the public otherwise violated securities laws?

2. As demonstrated by the recent reports about ESG metrics and executive compensations, corporations used arbitrary goals and misleading metrics to paint their companies as environmentally friendly, even when the companies were below the industry standards for toxic emissions and carbon emissions.[23]

    a. Will the SEC conduct a broad review into past ESG disclosures for corporations that claimed to tie executive compensation to environmental metrics?
    b. What criteria does the SEC use to determine if corporations are misleading investors and the public regarding ESG ties to executive compensation?
    c. What enforcement tools and authorities does the SEC retain in cases where companies may be misleading investors and the public about executive compensation and its connection to ESG criteria?

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[21] Securities & Exchange Commission, "ESG Disclosure – Keeping Pace with Developments Affecting Investors, Public Companies and the Capital Markets," John Coates, March 11, 2021, https://www.sec.gov/news/public-statement/coates-esg-disclosure-keeping-pace-031121.
[22] U.S. Senator Elizabeth Warren, "Warren, Casten, Colleagues Reintroduce Bill Requiring Public Companies to Disclose Climate-Related Risks," press release, April 15, 2021, warren.senate.gov/newsroom/press-releases/warren-casten-colleagues-reintroduce-bill-requiring-public-companies-to-disclose-climate-related-risks.
[23] Washington Post, "Despite spills and air pollution, fossil fuel companies award CEOs for environmental records," Douglas MacMillan and Julia Ingram, October 10, 2021, https://www.washingtonpost.com/business/interactive/2021/fossil-fuel-climate-bonus/.

3. In July 2021, the SEC's Asset Management Advisory Committee called for the creation of "meaningful, consistent, and comparable disclosure of material" ESG metrics, through an SEC provided framework,[24] and SEC Chair Gary Gensler announced that he had asked SEC staff to develop a "mandatory climate risk disclosure rule proposal for the Commission's consideration by the end of the year."[25]

    a. What is the approximate timeline for the release and implementation of a global framework for ESG disclosures?

    b. To what extent would the global framework address executive compensation, including the use of misleading ESG metrics?

Thank you for your attention to this important matter, and I look forward to your response.

Sincerely,

Elizabeth Warren
United States Senator

[24] Securities and Exchange Commission, "Asset Management Advisory Commission Recommendations for ESG," July 7, 2021, https://www.sec.gov/files/spotlight/amac/recommendations-esg.pdf.
[25] Securities & Exchange Commission, "Prepared Remarks Before the Principles for Responsible Investment 'Climate and Global Financial Markets' Webinar," Gary Gensler, July 28, 2021, https://www.sec.gov/news/speech/gensler-pri-2021-07-28.