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March 28, 2022

Securities and Exchange Commission
Attn: Vanessa Countryman
Secretary
100 F St. NE
Washington, DC 20549

Re: File No. S7-10-22, The Enhancement and Standardization of Climate-Related Disclosures for Investors

Thank you for the opportunity to submit comments in regard to the Commission's proposed rule titled *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (Securities Act Release 33-11042; Exchange Act Release 34,9447). CrowdCheck Law, together with CrowdCheck, Inc., is a leading provider of compliance and legal services for issuers undertaking offerings and complying with ongoing reporting under Regulation A of the Securities Act. Now that Regulation A is in its seventh year since its amendments in 2015, we are starting to see more issuers graduate from reporting under Regulation A to becoming Exchange Act reporting companies. It is on their behalf, and future smaller reporting companies, that we provide our concerns here.

First off, we recognize the importance of the Commission's proposal, and government-wide efforts to address the scientific realities of human-caused climate change. However, we believe that this proposal will inhibit capital formation for smaller companies and force them to stay away from public securities markets for longer periods – a trend that the Commission has sought to reverse in other contexts.

We believe that the proposals do not reflect the fact that some public companies, even though they are able to avail themselves of the accommodations made for "smaller reporting companies", are very small indeed. The Commission's own economic analysis for this proposal identifies that it anticipates the cost for smaller reporting companies to be $490,000 in the first year to comply with the proposal, and $420,000 in subsequent years. Importantly, $350,000 is assumed to be outside professional costs for the first year, and $300,000 for outside professional costs in subsequent years. For many very small reporting companies, it is just not feasible to endure those ongoing costs. For example, for two companies we have worked with that recently became Exchange Act reporting companies, the estimated costs for the first year of compliance with the proposed rules would represent approximately

18.5% and 15%, respectively, of their entire gross revenues for the year prior to becoming a reporting company.

Further, smaller reporting companies would not be able to offset those costs with internal support. These companies have small management teams, typically consisting of a handful of individuals. In the financial context, smaller reporting companies can help reduce accounting costs by putting more responsibilities onto their principal accounting officers. Here, there is likely never going to be a member of management with the specialized skills for the climate-related reporting. Instead, smaller reporting companies would be required to reallocate significant amounts of their operating cash from building and growing their companies – what investors expect them to do – into climate-related reporting.

The proposed rules are presented as providing benefits to investors because of the standardization of climate-related disclosures and investor interest in the information. However, what is not addressed in the proposal is the harm to investors that would result from companies leaving the public markets, or not participating in public securities markets at all because they would not be able to absorb the costs of the climate-related disclosures. As noted in the 2021 Annual Report of the Office of the Advocate for Small Business Capital Formation, "The vibrancy of our capital markets depends on having companies of varying sizes, from micro-cap to mega-cap, to provide investors with meaningful options for investment, the trademark of our public markets. In developing rules to improve disclosures to investors by public companies, it is critical to be mindful of how and whether our rules are promoting an environment that fosters smaller public companies going and remaining public. We support efforts to continue tailoring the disclosure and reporting framework to the complexity and size of operations of companies, either by scaling obligations or delaying compliance for the smallest of the public companies, particularly as it pertains to potential new or expanded disclosure requirements."

The loss of reporting companies needs to be taken into account before the Commission proceeds with its proposed rule.

In light of the foregoing, we propose that the Commission exempt smaller reporting companies, or at least the very smallest companies in that category, from the proposed rule. However, we would propose that if any smaller reporting company does choose to voluntarily adopt the new climate-related disclosures, they must do so in the manner prescribed by the Commission's proposed rule. We believe this balances the Commission's interest in having standardized climate-related disclosure while still allowing smaller reporting companies to participate in public securities markets.

Yours truly,

Andrew Stephenson
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