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VIA ELECTRONIC SUBMISSION

May 13, 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

We appreciate the opportunity to provide comments regarding the Commissioner's proposed rule: *The Enhancement and Standardization of Climate-Related Disclosures for Investors (Securities Act Release 33-11042; Exchange Act Release 34,9447).*

Like many companies, Overstock.com believes a sound ESG program is critical to meet our future needs and the future needs of our customers and employees. We recognize the importance of effective environmental regulatory structures, and common frameworks, aimed at curbing human-caused negative climate effects in meaningful ways.

We have instituted such a program. The program is flexible to meet the needs of growth and advancement in this area, so as not to overwhelm with abrupt change and to accommodate new development in this area. In general terms we are aligned with the Commission in its aim to increase available ESG information to the public.

However, we urge the Commission to proceed with balance, common sense, and flexibility, applying a view towards all effects its proposal will and could have on public companies, the public markets, and the economy.

Others have and will point out in comments many valid concerns for potentially negative consequences of a strict implementation of the proposal as written. We share some of those concerns which have already been submitted to the Commission, some of which we list and comment on at the end of this letter.

For now, we want to specifically turn the Commission's attention on two aspects of the Commission's proposal which concern us and which the Commission ought to address:

1. These disclosures will dramatically increase the cost of small companies going public; and
2. The disclosures will have discriminatory market effects between and among public companies in different business sectors and between public and non-public companies.

Increased costs of going public

Access to public markets is often vital for small company growth. That was the purpose of our going public twenty years ago. Though there are accommodations in these proposed rules for smaller reporting companies, under the Commission's, perhaps conservative, analysis the annual first-year costs of compliance are $490,000, with ongoing compliance estimated at $420,000.

Many smaller companies will need to think twice about that price tag.

Their analysis might lead them away from public markets. And such a decision would deny public investors access to promising growth companies which may, because of this additional public market gateway cost, choose private financing.

Smaller companies must have a reasonable path to the option of going public, for their own benefit and that of investors seeking to promote and profit from investment in upcoming technologies and successful business models. Consequently, we recommend the Commission further consider lowering the burdens and costs these proposed rules would impose on smaller companies – both those seeking to enter public markets and those already part of the public markets.

Discriminatory market effects

These proposed rules will more profoundly impact some business segments over others. Particularly, they will dramatically impact those public companies, like ours, which are dependent upon large networks of third-party suppliers, which the company does not control, and which the company may not be able to leverage into cooperative disclosure compliance under these proposed rules. The Commission suggests that companies might mitigate that impact, for example, by "choosing to purchase from more GHG efficient producers," or by choosing products whose production involves less GHG emissions, or contracting with more energy efficient transportation companies, as well as other Commission-suggested alternatives.

We invite the Commission to examine this problem and these suggestions from management's viewpoint of how lacking in practicality these alternatives are.

First, there will likely be increased costs for public companies which non-public competitors are not obliged to pay, putting public companies at a clear competitive disadvantage.

We are a retail business. We have a large network of wholesale product suppliers—some large, and some small—some more dependent on us, and others, not so much. To present wholesale products at a good price, suppliers often operate on thin margins—as do we. To ask suppliers to provide the information required by these proposed rules or conform their procedures or practices to more climate- friendly practices, will necessarily increase their costs. Those cost increases could be dramatic. Cooperation with outside auditors will also add costs and business disruptions. Suppliers may fear disclosure might eventually alter their business model and increase costs dramatically, and so on.

Variety of product is a necessity in an online retail business like ours. And though some of our product suppliers may cooperate and bear the indirect costs imposed on them by these proposed rules, many may not. Key suppliers may not.

Those who do not may turn to other product outlets, decreasing, for us, the variety of products we might otherwise offer—thus, putting us, and other publicly traded markets or companies, at a disadvantage to private market competition, unfettered by these requirements. We believe that many publicly traded companies, across business sectors, may also depend on large numbers of suppliers and face similar prospects.

The same is true in transportation and product production. Transporting or manufacturing for a publicly traded company will surely increase third-party costs, whereas these costs are not similarly encountered when dealing with our non-public competitors—again, especially true in the case of Scope 3 mandated disclosures.

The Commission must realize that it is not just a matter of additional compliance costs for the public company to bear in providing these disclosures. It is also a matter of unanticipated effects the public company may be powerless to prevent, as in the instance of being cut off from vital suppliers. The Commission must not presume that publicly traded companies simply have the money or the leverage to obtain disclosure information and cooperation when suppliers have other outlets.

Additional Concerns We Share with Other Commentors

As we mentioned in the beginning of this letter, in addition to our specific concerns, we share concerns which other commentors have noted, including the following:

- The proposal tends towards prescriptive mandatory disclosures and away from management determinations based upon material risks—irrespective of the cause of those risks.
- Standardizing disclosures in the hands of regulators, instead of those who have a day-to-day, hands-on understanding of their companies and their operations can lead both to under-and over-disclosure. Both scenarios harm investors.
- Stepping away from management's determination of the materiality of disclosures towards mandated disclosures, crafted by regulators to satisfy for certain market segments and interests, may start a trend towards similar mandatory disclosures to satisfy other market segments, such as in Human Resources. Eventually, regulators, and not management, are stating what is "universally material" in company operations, irrespective of materiality. This is dangerous, particularly where regulators are often far removed from the reality of hands-on management. Eventually the content of disclosures may become a far cry from financial materiality and meaningful exposition to investors of other material risks management is in a good position to weigh and identify. A constantly pressing regulatory finger on the scale of what gets disclosed in Commission filings can lead to displacement of management's finger on that same scale.
- Likewise, mandatory disclosures concerning an area still developing and requiring the gathering of information, not previously required, might lead to opportunistic lawsuits against companies earnestly striving to comply. We share concerns that safe harbors described in the proposal need to be clearer and surer. This has application to mandated Scope 3 disclosures which is the newest of the new.
- The costs of the proposal are materially underestimated. While it is true that some companies have already undertaken these disclosures, many of the companies so doing are very large and capable of bearing those costs. We share concerns that the concessions for smaller companies and those advancing and in transition to growth need more attention, especially when it comes to Scope 3.

These only mention briefly general concerns we share which have been the focal subjects of other commentators. We look forward to reviewing all comments provided to the Commission.

Our view is that while this proposal aims for good and worthy goal of improvement in environmental disclosure standardization, without universal application to all business sectors, it will likely misfire and with serious consequence for publicly companies like ours, and even for public companies unlike ours.

We urge the Commission to carefully consider the issues we have outlined. And we thank the Commission for that consideration.

Sincerely,

E. Glen Nickle
Chief Legal Officer & Corporate Secretary