ASHFORD

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Dear Ms. Countryman:

Re: File Number S7-10-22

This letter is written on behalf of Ashford Inc., Braemar Hotels & Resorts Inc., and Ashford Hospitality Trust, Inc. in regards to the Securities and Exchange Commission's (SEC) proposed rule on "The Enhancement and Standardization of Climate-Related Disclosures for Investors."

This proposal appears to be strongly influenced by a small group of environmental activists, politicians, and institutional investors attempting to advance their own environmental agendas. While climate issues are an important cause, it is neither the role of, nor within the expertise of, the SEC to fight climate-change through rulemaking. The SEC's mission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. With the focus of this proposal being environmental regulation, it fails to further the SEC's express mission.

If this proposal were to be become final, it would not only fail to protect investors, but it would be detrimental to public companies, shareholder returns, and the market as a whole, specifically because:

- the current disclosure regime already requires adequate climate-related disclosures, and broadening the disclosure obligations is unnecessary and would oversaturate the market with useless information;

- the costs to public companies would be enormous with very limited benefit to investors; and

- companies may be disincentivized from accessing public capital markets or setting climate-related goals to avoid having to make burdensome disclosures.

<u>The Current Disclosure Regime Already Requires Adequate Climate-Related Disclosures, and Broadening the Disclosure Obligations is Unnecessary and Would Oversaturate the Market with Useless Information</u>

The current disclosure regime, as it stands, furnishes adequate climate-related disclosures to investors. Accordingly, with this proposed rule, the SEC is attempting to fix a problem that simply does not exist. SEC Chair Gary Gensler stated the newly proposed reporting requirements would "provide investors with consistent, comparable, and decision-useful information for making their investment decisions."[1] However, this type of information is already readily available to investors. The securities laws currently require companies to disclose any material risks, including climate-related risks, that may have an effect on their operations or financial performance. Moreover, on top of the required disclosures, many companies provide further climate-related information in voluntary sustainability reports. Between the required and voluntary disclosures, there is a sufficient amount of useful information available to investors so they can make informed investment decisions.

Not only is there enough information currently available to investors, there is the *right* amount of information available. The current disclosure regime is predicated on the concept of materiality, meaning companies need only disclose particular facts if there is a substantial likelihood a reasonable investor would view them as important in making an investment decision. The materiality standard is useful because it signals to investors that the information a company discloses is relevant to its financial performance. The materiality standard thus prevents investors from being overwhelmed with unnecessary information that has no appreciable impact on the company's operations or the investor's eventual financial return.

Many of the proposed reporting requirements abandon the concept of materiality entirely. For example, public companies will be required to disclose its Scope 1 and Scope 2 emissions regardless of whether or not this information is material (*i.e.*, regardless of whether they are important to an investor's investment decision). Thus, not only would many of these disclosures, by definition, be unimportant to investors with respect to making an investment decision, they may also complicate an investor's ability to distinguish the information that is relevant from the information that is not.

<u>The Costs to Public Companies Will Be Enormous with Very Limited Benefit to Investors</u>

Aside from the fact that the information disclosed will be useless to many investors, the burdens these requirements will impose on public companies will be enormous. The SEC estimated that the annual costs to comply with the new disclosure requirements would range from $490,000 to $640,000 during the first year and $420,000 to $530,000 in subsequent years. In terms of managerial and attention costs, the SEC estimates an additional 3,400 to 4,400 hours of work during the first year and an additional 2,900 to 3,700 hours of work during years two through six in order for companies to comply with the proposed rules. Moreover, these estimates do not even

[1] Securities and Exchange Commission, SEC Proposes Rules to Enhance and Standardize Climate-Related Disclosures for Investors, Press Release (Mar. 21, 2022), https://www.sec.gov/news/press-release/2022-46.

take into account the transaction costs associated with hiring and training additional personnel to implement and administer the new procedures required to satisfy the new reporting obligations.

Some of the most burdensome aspects of the proposed rules include the third-party attestation requirements and the requirement to disclose material Scope 3 emissions. Scope 3 emissions are "indirect emissions generated from sources that are neither owned nor controlled by the company, including emissions occurring from upstream and downstream activities and goods." Companies would thus have to expend a significant amount of resources to identify the sources of its Scope 3 emissions; collect and quantify Scope 3 emissions data; make materiality determinations (which can likely only occur after sources have been identified and data has been evaluated); and confirm the data's accuracy. This imposes significant compliance costs on not only public companies subject to reporting requirements, but also the companies' vendors, suppliers, and customers that will have to provide Scope 3 emissions data. To make matters worse, many of these vendors, suppliers, and customers are small, non-public companies that are much less resourced and will more severely experience the associated burdens.

Additionally, the litigation that will inevitably result from these new rules will also impose significant costs on public companies. The proposed reporting requirements are extensive and complex, leaving significant room for error or inaccuracies in disclosures and questions of interpretation. Specifically, disclosures with respect to Scope 3 emissions are particularly risky for public companies, given that the public company has no control over the entities generating and providing the data.

Furthermore, the risk of litigation is exacerbated by the inherent uncertainty of what the SEC is asking public companies to disclose. For example, the proposed reporting obligations require a company to include a note in its consolidated financial statements detailing the financial impact a severe weather event would have on a particular line item if the value of that impact equates to 1% or more of the total line item. First and foremost, this 1% threshold is exceptionally low, burdensome for companies to comply with, and would only overwhelm investors with non-material information, rather than meaningful disclosures. Moreover, the proposed rules fail to adequately define "severe weather event" and "climate-related risks," making it difficult for companies to assess whether a particular event falls into one of those categories. Companies in the hospitality industry deal with the effects of various natural disasters and adverse weather events constantly. Thus, any uncertainty surrounding how these terms will be interpreted may leave a company wondering whether it will be subject to liability for failing to anticipate how a flood, fire, or other natural disaster would impact its business.

Companies May Be Disincentivized from Accessing Public Capital Markets or Setting Climate-Related Goals to Avoid Having to Make Burdensome Disclosures

Given the immense risks and costs associated with the proposed reporting obligations, fewer companies may be willing to go public in the first place, which could hinder one of the SEC's key goals to facilitate capital formation. Additionally, companies that are currently publicly traded may be less willing to set climate-related goals to avoid triggering the need to make certain disclosures. For instance, the proposed reporting requirements indicate that a public company that has set a target or goal with respect to Scope 3 emissions must then make Scope 3-related disclosures, even though it may not have had to if it had not set such a goal.

<u>Conclusion</u>

Overall, the negative consequences this proposal will have on the market significantly outweigh the benefits, if any. This begs the question of whether the SEC proposed these reporting requirements to assist investors in making investment decisions or primarily to promote the public policy agenda of a few environmental activists and politicians. The SEC is not, and has never been, tasked with environmental regulation, and we believe this proposed rule is clearly outside of the area of expertise of the SEC as a securities law regulator. Accordingly, we strongly oppose this proposal. Thank you for your attention to this issue.

Sincerely,

Monty J. Bennett
Chief Executive Officer and Chairman of the Board, Ashford Inc.
Chairman of the Board, Braemar Hotels & Resorts Inc.
Chairman of the Board, Ashford Hospitality Trust, Inc.