



MID-SIZE BANK COALITION OF AMERICA

June 14, 2022

Ms. Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Send to: rule-comments@sec.gov

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

Dear Ms. Countryman:

The Mid-Size Bank Coalition of America (the “MBCA”) appreciates the opportunity to provide comments on the above-referenced proposed climate-related disclosure rules (the “Proposed Rules”), published by the Securities and Exchange Commission (the “SEC”) on March 21, 2022.¹

The MBCA is the voice of mid-size banks in America. From its founding in 2011, the MBCA has grown to represent more than 100 banks that are devoted to driving positive change and helping their clients, employees and communities flourish. MBCA members range in size from about \$10 billion to \$100 billion in assets and average approximately \$20 billion. Our banks collectively serve clients and communities through more than 13,000 branches in all 50 states, Washington, DC, and three U.S. territories. MBCA banks are typically the largest independent banks headquartered in their respective states. More information about MBCA and its member banks is available at www.midsizebanks.com.

The MBCA is supportive of the SEC’s overarching goals of providing investors with “consistent, comparable, and reliable—and therefore decision-useful—information” about issuers’ climate-related risks. However, the MBCA is making a few specific recommendations to the Proposed Rules that are designed to address certain key concerns raised by our members.

¹ SEC, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Release Nos. 33-11042; 34-94478; File No. S7-10-22 at 7 (March 21, 2022) (the “Proposing Release”).

Our intention for raising these comments is to provide constructive recommendations to the SEC so as to further the SEC's stated goals.

The MBCA stands ready to assist the SEC in its efforts to develop the final rules on climate-related disclosures, and will be pleased to meet with you to discuss our comments or discuss orally any questions the SEC may have on our recommendations.

A. *Recommend that the SEC not require Scope 3 disclosures*

Scope 3 emissions² disclosures would likely be automatically required for bank issuers under the Proposed Rules, even if they may not be material to an investor's investment or voting decision under the SEC's traditional "materiality" standard.

The Proposed Rules would require disclosure of Scope 3 emissions either if those emissions are material, or if the company has set a GHG emissions reduction target or goal that includes Scope 3 emissions.³ For many bank issuers, disclosure will be triggered under one or both of these triggers, even if not "material" by the traditional standard for securities filings with the SEC (*i.e.*, if there is a substantial likelihood that a reasonable investor would consider them important when making an investment or voting decision).⁴

With respect to the "materiality" trigger, although the SEC declined to include in the text of the Proposed Rule a quantitative threshold for determining materiality of Scope 3 emissions, it noted, in its discussion of the Proposed Rules, that some companies rely on, or support reliance on, a quantitative threshold such as 40% of total GHG emissions for assessing the materiality of Scope 3 emissions.⁵ This would be the equivalent of an automatic trigger for banks and other financial institutions. According to a report published by the CDP, a climate nonprofit, GHG emissions associated with financial institutions' investing, lending and underwriting activities are on average over 700 times higher than their direct emissions.⁶ Given these numbers, almost all banks' Scope 3 emissions will exceed the 40% quantitative threshold referenced in the Proposing Release. In addition, the SEC also indicated that even if Scope 3 emissions may make up a relatively small portion of a company's overall GHG emissions, they may still be deemed to be

² Under the Proposed Rules, Scope 3 emissions cover "all indirect GHG emissions not otherwise included in a registrant's Scope 2 emissions, which occur in the upstream and downstream activities of an issuer's value chain." See proposed 17 CFR §229.1500(r).

³ See proposed 17 CFR §229.1504(c)(1).

⁴ See *Basic Inc. v. Levinson*, 485 U.S. 224, 231-232; see also *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, at 449 (1976).

⁵ Proposing Release at 165.

⁶ See CDP, *The Time to Green Finance: CDP Financial Services Disclosure Report 2020* at 34 (April 28, 2021), available at <https://www.cdp.net/en/articles/media/finance-sectors-funded-emissions-over-700-times-greater-than-its-own> (noting that, based on responses from 84 financial institutions reporting Scope 3 emissions to the CDP, financed emissions are over 700 times larger than direct emissions).

qualitatively material, if Scope 3 emissions represent a significant risk or are subject to significant regulatory focus.⁷ Though U.S. banking regulators are certainly focused on climate-related financial risks,⁸ we respectfully suggest that there is a questionable syllogism in maintaining that, if the regulators are focused on climate risk, climate risk is therefore material to investors.

In response to demand from certain large institutional investors and other stakeholders, many banks have already voluntarily announced their GHG emissions reduction targets or goals, some of which include Scope 3 emissions or categories of Scope 3 emissions (*e.g.*, Scope 3 emissions from business travel). If a bank has established Scope 3 emissions reduction goals or targets, it would be required to provide Scope 3 emissions disclosures under the Proposed Rules, regardless of whether its Scope 3 emissions are in any way material to an investor’s voting or investment decision.

Disclosure of Scope 3 emissions presents significant implementation challenges in light of the complexity of banks’ “value chains” (including, but not limited to, lending and investment portfolios), reliance on third-party data, and the lack of consensus in calculation methodologies.

First, defining the scope of Scope 3 emissions from banks’ value chains is challenging considering the variety, scope and complexity of activities in their value chains. Under the Proposed Rules, “value chain” is broadly defined to mean the upstream and downstream activities related to an issuer’s operations. The Proposed Rules included non-exhaustive examples of upstream and downstream activities in which Scope 3 emissions might occur, including an issuer’s downstream “investment” activities. For banks, their “investment” activities would capture what are commonly referred to as “financed emissions” (*i.e.*, loans and companies which emit carbon). Defining the scope of Scope 3 emissions from banks’

⁷ Proposing Release at 165-166.

⁸ *See, e.g.*, Office of the Comptroller of the Currency, *Risk Management: Principles for Climate-Related Financial Risk Management for Large Banks* at 1 (Dec. 16, 2021), available at <https://www.occ.treas.gov/news-issuances/bulletins/2021/bulletin-2021-62a.pdf> (the “OCC Draft Principles”) (“The Office of the Comptroller of the Currency (OCC) has identified the effects of climate change and the transition to a low carbon economy as presenting emerging risks to banks and the financial system”); FDIC, Notice of proposed policy statement; request for comment, *Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions*, RIN 3064-ZA32 (March 29, 2022), available at <https://www.fdic.gov/news/board-matters/2022/2022-03-29-notational-fr.pdf> (the “FDIC Proposed Statement”) (“The effects of climate change and the transition to a low carbon economy present emerging economic and financial risks that threaten the safety and soundness of financial institutions and the stability of the financial system.”); Lael Brainard, Governor, Federal Reserve Board, speech at the 2021 Federal Reserve Stress Testing Research Conference, Federal Reserve Bank of Boston, Boston, Massachusetts: *Building Climate Scenario Analysis on the Foundations of Economic Research* (Oct. 7, 2021), available at <https://www.federalreserve.gov/newsevents/speech/brainard20211007a.htm> (the “Brainard Speech”) (noting that “the Federal Reserve is carefully considering the potential implications of climate-related risks for financial institutions and the financial system, with scenario analysis emerging as a potential key analytical tool for that purpose.”).

investment activities is particularly challenging. For example, under the GHG Protocol,⁹ a bank's value chain for purposes of the "Investments" category under Scope 3 includes not only the bank's equity investments, debt investments and project finance activities, but also investments managed by a bank on behalf of clients or services provided to clients (including investment and asset management, corporate underwriting and financial advisory services), as well as other types of investments, financial contracts and other financial services (*e.g.*, pension funds, retirement accounts, securitized products, insurance contracts, credit guarantees, financial guarantees, export credit insurance, credit default swaps, etc.).¹⁰ Even within the better defined types of investment activities, such as equity investments, debt investments and project finance, defining the scope of Scope 3 emissions arising from those investments would often be a complex process. As an example, under the GHG Protocol, GHG emissions from a bank's equity investments (including in subsidiaries, affiliated companies and joint ventures) would be included in Scope 1 and Scope 2 emissions if the bank is using the equity share consolidation approach, or in Scope 3 emissions based on the equity investee's Scope 1 and Scope 2 emissions if the bank is using either the operational control or financial control consolidation approach and does not have control over the equity investee.¹¹ As another example, under the GHG Protocol, GHG emissions in connection with debt investments (including corporate bonds and commercial loans) and project finance (including infrastructure and industrial projects where the bank is the sponsor or the financier) are Scope 3 emissions, but the GHG Protocol would apply different GHG accounting standards based on whether, for example, there is known use of proceeds.¹²

Second, Scope 3 disclosures present significant data collection challenges for banks, because banks would have to obtain a significant amount of data (to the extent such data is even available¹³) from third parties in their value chains, including their customers, to calculate their Scope 3 emissions. Today, most banks likely do not have any contractual right to require climate data reporting from their existing customers and other third parties in their value chain. If the Proposed Rules are adopted as proposed, banks would need to impose climate reporting covenants on their customers and other third parties in their value chain to enable banks to receive such third-party climate data in a timely and consistent manner, which are necessary for

⁹ The GHG Protocol, a widely used GHG accounting and reporting standard, introduced the concept of "scopes" of emissions. The SEC has based the Proposed Rules primarily on the GHG Protocol's concept of scopes and related methodology. *See* Proposing Release, at 41-42.

¹⁰ GHG Protocol, Scope 3 Calculation Guidance, *available at* https://ghgprotocol.org/sites/default/files/standards/Scope3_Calculation_Guidance_0.pdf. Scope 3 emissions would also include, among other things, upstream and downstream leased assets.

¹¹ *Id.*

¹² *Id.*

¹³ For example, for many banks, their largest class of assets is U.S. government securities. Does the government disclose aggregate, credible and auditable data on its emissions? A second major asset class for banks is mortgage securities. What obligation does the lender/investor have to obtain emissions from the homes or offices that are in the portfolio of the issuer or being constructed and financed (including the emissions from the construction itself) by the issuer?

the banks' own compliance with the SEC's climate-related disclosure requirements. However, any industry standards and market practice for third-party climate data reporting would take time to develop and implement, especially considering the various asset classes and the large number of customers banks may have. This is especially relevant for MBCA members, because many of their customers are private companies. Private companies would not be subject to the SEC's climate-related disclosure rules and generally have faced less investor pressure to make voluntary climate-related disclosures. As a result, private companies likely would not have established any formal reporting procedures for the data that would constitute Scope 3 emissions, which means it could take banks much longer to implement any climate data reporting requirements on their private company customers. And if private companies refused to collect and provide the required data, as many are likely to do, the bank is faced with the Hobson's choice of violating the SEC mandate or losing the customer to a nonpublic lender, thus harming – not helping – our investors.

Third, the data collection challenge faced by banks will be amplified due to a lack of consensus in the calculation methodologies for Scope 3 emissions. For example, although certain standards and methodologies developed by financial sector participants, such as the Partnership for Carbon Accounting Financials (PCAF), are beginning to gain traction,¹⁴ there is still no broad consensus on any standard or methodology for calculating financed emissions, which, in turn, makes it exceedingly difficult, if not impossible, to have any consensus on the third-party data required to be collected for financed emissions calculations. Financed emissions, of course, constitute only one category of Scope 3 emissions. The SEC recognized this reality in declining to mandate a particular methodology for calculating financed emissions in the Proposed Rules, explaining that this would permit flexibility for financial sector issuers to choose the methodology that best suits its particular portfolio and financing activities.¹⁵ However, without any mandated methodology, Scope 3 disclosures are unlikely to produce decision-useful information to investors, and indeed are likely to create confusion and engender litigation.

Even if substantive agreements could ultimately be reached on the disclosure methodologies for Scope 3 emissions, the SEC's timing requirements are not realistic. We acknowledge that Scope 3 emissions disclosures are subject to a longer phase-in period of one additional year compared to the compliance timeline for other required disclosures.¹⁶ However, given the time it will take for the market to reach any consensus on the standards and methodologies for calculating financed emissions and other Scope 3 emissions, and the time it will take to align internal and external processes with any standardized methodology, requiring large accelerated filers to make Scope 3 emissions disclosures as early as for fiscal year 2024

¹⁴ See PCAF, *Global GHG Accounting & Reporting Standard for the Financial Industry* (2020), available at <https://carbonaccountingfinancials.com/files/downloads/PCAF-Global-GHG-Standard.pdf>.

¹⁵ Proposing Release at 206-207.

¹⁶ Proposing Release at 291.

will not provide companies, especially banks, with a sufficient transition period. Although bank issuers that are accelerated filers would have an additional year to comply with the relevant requirements compared to the large accelerated filers, many of these bank issuers will also be less advanced in their current climate reporting capabilities than large accelerated filers due to the much broader scope of the requirements imposed on these banks in terms of what can be referred to as “indirect emissions.” Moreover, because of this indirect nature of banks’ involvement, there have been historically fewer investor concerns expressed (except for a few globally significant banks).

We also acknowledge that the SEC has proposed a modified liability safe harbor under which the disclosure of Scope 3 emissions would not be deemed a fraudulent statement unless it is shown that the disclosure was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.¹⁷ However, given the immense challenges of collecting, calculating and disclosing Scope 3 estimates, including the need to update prior disclosure as methodologies continue to evolve, banks will be subject to substantial reputational risk, stakeholder scrutiny and litigation exposure with respect to disclosure of Scope 3 data. Considering the lack of high-quality data and standardized methodology for estimating Scope 3 emissions (especially in the early years of the effectiveness of any final rules), Scope 3 disclosures are unlikely to be decision-useful to investors, and, indeed, may be confusing, due to the inherent lack of consistency, comparability and reliability.

For the reasons outlined above, we strongly recommend that the SEC not require Scope 3 disclosures. If in the future the SEC determines that market practices regarding Scope 3 emissions data collection and calculation have reached a level of sufficient maturity that would enable decision-useful Scope 3 disclosures, we recommend that the SEC re-propose Scope 3 disclosure requirements then for public comments.

If the SEC decides to adopt Scope 3 disclosure requirements as proposed, the MBCA strongly urges that the SEC work closely with issuers and other market participants to clarify the proposed requirements¹⁸ and develop industry-specific guidance. The MBCA would welcome the opportunity to assist the SEC in developing the specific guidance bank issuers need in order to calculate Scope 3 emissions, especially financed emissions.

¹⁷ See proposed 17 CFR §229.1504(f)(1).

¹⁸ For example, the Proposed Rules would require issuers to disclose GHG intensity for Scope 1 and 2 emissions and separately for Scope 3 emissions (if Scope 3 emissions are otherwise disclosed) in terms of both metric tons of CO₂e per unit of total revenue and per unit of production. According to the Proposed Rules, the “unit of production” should be “relevant to the registrants’ industry” (*Proposing Release* at 181), but it is unclear what the appropriate “unit of production” measure would be for the financial sector or what other measures of economic output should be used if a financial institution determines that it does not have a unit of production.

B. *Recommend that the SEC not require scenario analysis disclosures because an issuer conducts scenario analysis*

Under the Proposed Rules, detailed scenario analysis disclosures would be required for issuers that conduct climate scenario analysis.¹⁹ Banks and banking regulators have started exploring the use of climate scenario analysis as a tool for managing climate-related financial risks.²⁰ The Office of the Comptroller of the Currency (the “OCC”)²¹ and the Federal Deposit Insurance Corporation (the “FDIC”)²² have issued proposed guidance for large banks (over \$100 billion in total assets) on management of climate-related financial risk, noting that management should develop and implement climate-related scenario analysis frameworks. Federal Reserve Vice Chair Lael Brainard also indicated the importance of scenario analysis for informing risk management at the level of individual financial institutions and of “building the foundations [for climate scenario analysis] now.”²³

However, banking regulators also recognize that climate scenario analysis is still nascent and will continue to be developed in the coming years. Drawing lessons from the evolution of bank stress tests, Federal Reserve Vice Chair Brainard perceptively noted that the stress test infrastructure and granular models and data that are currently available “bear little resemblance to that first stress test” developed at the height of the 2007-09 financial crisis, and recognized that “we should be humble about what the first generation of climate scenario analysis is likely to deliver.”²⁴ Institutions across the banking industry are, overall, still in early stages of implementing scenario analysis. There is a lack of maturity in scenario analysis methodologies generally, with the underlying climate science still in the process of evolving.²⁵ The process of further developing and refining scenario analysis to establish appropriate scenarios, assumptions

¹⁹ See proposed 17 CFR §229.1502(f).

²⁰ See generally Financial Stability Board, *Supervisory and Regulatory Approaches to Climate-related Risks: Interim Report* (April 29, 2022), available at <https://www.fsb.org/2022/04/supervisory-and-regulatory-approaches-to-climate-related-risks-interim-report/> (discussing how the use of climate scenario analysis and stress tests can be expanded to incorporate systemic risks that arise from climate change and better inform a macroprudential view of cross-sectoral and cross-jurisdictional risks to the financial system).

²¹ See OCC Draft Principles.

²² See FDIC Proposed Statement.

²³ See Brainard Speech.

²⁴ *Id.*

²⁵ See Financial Stability Board, *Supervisory and Regulatory Approaches to Climate-related Risks: Interim Report* at 38 (noting that authorities and financial institutions are at the “early stages of the design and use of” scenario analysis methodologies and recognizing “the need to further develop scientifically based methodologies, analytical tools and capacity as the financial sector gains deeper understanding of climate related risks, their impact and experience with the measurement methodologies”).

and methodologies is expected to be an iterative process. Input from industry members and regulators over time will inform industry-standard practices.

Requiring detailed scenario analysis disclosures in the same year that a bank first uses scenario analysis would introduce inconsistencies across the industry, as well as for a particular bank's disclosures year-over-year, as methodologies evolve. The resulting inconsistency will hinder the usefulness of such disclosures for investors, and increase the risk of investor confusion and issuer reputational damage and legal liability. For bank issuers that do not already conduct scenario analysis, the Proposed Rules would likely discourage or delay the utilization of this useful tool until they are required to do so by their banking regulators or until methodologies and standards have matured.

Furthermore, the SEC's proposed disclosure approach with respect to climate scenario analysis is very different from the approach taken by U.S. banking regulators regarding capital and liquidity stress tests. Today, U.S. banking regulators impose capital and liquidity stress test requirements on large banks based on their size and other risk-based characteristics. For banks that are subject to those requirements, only a small portion of the information is disclosed publicly. Requiring bank issuers of all sizes to disclose details about their scenario analysis—including the scenarios considered, parameters, assumptions, analytical choices and the projected principal financial impacts on the bank issuer's business strategy under each scenario—as soon as they start conducting scenario analysis could be particularly burdensome for smaller banks without a commensurate benefit for investors.

Therefore, we recommend that the SEC not require climate scenario analysis even if an issuer conducts climate scenario analysis.

C. Recommend that the SEC not require new climate-related disclosures in notes to financial statements

The Proposed Rules would require issuers to make qualitative and quantitative climate-related disclosures in notes to audited financial statements.²⁶ In particular, the Proposed Rules would require an issuer to disclose the impact of climate-related risks on its financial statement line items and expenditure metrics, each triggered at a 1% threshold.²⁷

First, these requirements deviate substantially from customary approaches to materiality used by public companies and their auditors when preparing financial statements, and are not aligned with the recommendations of the TCFD framework or other regulatory frameworks based on the TCFD framework.

²⁶ See proposed 17 CFR §210.14-02.

²⁷ See proposed 17 CFR §210.14-02(b).

Secondly, requiring registrants to make such disclosures in notes to financial statements would create significant implementation challenges, especially since companies—even ones that produce robust, TCFD-aligned climate reports today—generally do not track climate impacts on a financial statement line-item basis.²⁸

Determining what financial impacts result from climate-related (especially indirect) activities and the extent of the impacts requires substantial subjective assessments of the many factors that could impact the inputs that go into a financial statement line item. For example, under the Proposed Rules’ requirement to disclose the financial impacts related to transition activities, the impact of “any efforts to reduce GHG emissions or otherwise mitigate exposure to transition risks” on any relevant line items would be required to be disclosed.²⁹ This would require issuers to make highly subjective assessments not only regarding the financial impact of such efforts, but also regarding the allocation of such impact among the relevant line items.

Finally, we believe banks will face significant challenges when identifying financial impacts from climate-related events because these events generally do not happen in isolation from, and compound with, other non-weather items, like the pandemic, varying market conditions, seasonal trends or changing customer behavior. For example, when a major hurricane hits a bank’s key geographical market, the bank generally sees some decline in revenue with the reduced activity and then an uptick during the recovery. To assign a specific portion of the bank’s financial results to that specific weather event would require significant effort, would be highly subjective and may be difficult to support for assurances purposes. Further, even if nothing reaches the low 1% threshold, there will be significant cost to segregate and track these items and additional audit fees to perform the audit and obtain assurance over the determination that nothing is in scope for reporting.

For the above reasons, any resulting financial statements would likely be diluted by a large volume of immaterial climate-related disclosures that are subjective, speculative and inherently less reliable. Such disclosure will not only be very costly and difficult for issuers to prepare, but will not be decision-useful to investors.

Therefore, we recommend that the SEC eliminate the requirement to include climate-related disclosures in the notes to the financial statements.

²⁸ The implementation challenges of the disaggregated line-item approach will be exacerbated by the FASB’s proposed changes to further disaggregate existing income statement expense line items. *See* FASB, *Invitation to Comment: Agenda Consultation* (June 24, 2021), available at <https://fasb.org/page/PageContent?pageId=/news-media/fasbinfocus/fif-june-2021-invitation-to-commentagenda-consultation.html#:~:text=In%20December%202020%2C%20Financial%20Accounting%20Standards%20Board%20%28FASB%29,where%20to%20focus%20its%20standard-setting%20efforts%20going%20forward>.

²⁹ *See* proposed 17 CFR §210.14-02(d). The Proposed Rules define “transition risks” broadly as well. *See* proposed 17 CFR §229.1500(c)(4).

D. Recommend that the SEC expand liability safe harbors to all climate-related disclosures

The Proposed Rules only include narrow safe harbors for Scope 3 emissions and forward-looking statements under the Private Securities Litigation Reform Act of 1995 (“PSLRA”).³⁰ We recommend that the proposed safe harbor for Scope 3 disclosures—under which such disclosures would be deemed not to be a fraudulent statement unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith³¹—apply to all of the new climate-related disclosures.

Given the inherent nature of the required disclosures (including reliance on third-party estimates, evolving climate science, ongoing global efforts to reach consensus on methodologies and standards), a broader liability safe harbor is both necessary and appropriate. A broader safe harbor would alleviate certain unintended effects of the Proposed Rules, such as chilling effects on IPOs and the voluntary adoption of climate scenario analysis, transition plans and GHG emissions reduction targets and goals, while standards develop. The ongoing litigation exposure arising from these additional disclosures, in the absence of an appropriate safe harbor, could further increase the overall costs of complying with the climate disclosure rules.

In addition, we recommend that the SEC provide a safe harbor for “climate expert” directors, similar to that which is currently provided to directors who have financial statement expertise³² and proposed to be provided to directors with cyber expertise.³³ Without a safe harbor insulating such director from liability, directors with such designated expertise may be subject to increased shareholder litigation or unwarranted public scrutiny with respect to climate-related events that may affect the issuer. This would likely, in turn, discourage the already limited pool of director candidates with climate expertise from serving in such capacity.

Therefore, we recommend that a safe harbor that is similar to the proposed Scope 3 safe harbor be applicable to all the new climate-related disclosures, and that a safe harbor that is similar to those applicable to other “expert” directors be applicable to any identified climate expert directors.

³⁰ See Proposing Release at 67 (noting that, to extent that the proposed climate-related disclosures constitute forward-looking statements, the forward-looking statement safe harbors pursuant to the PSLRA would apply assuming the conditions specified in those safe harbor provisions are met, but highlighting certain “important limitations to the PSLRA safe harbor”—for example, (i) the climate-related disclosures would be required in registration statements, including those for IPOs, and forward-looking statements made in connection with an IPO are excluded from the protections afforded by the PSLRA and (ii) the PSLRA does not limit the SEC’s ability to bring enforcement actions).

³¹ See proposed 17 CFR §229.1504(f)(1).

³² See 17 CFR §229.407(d)(5)(iv).

³³ See SEC Release No. 2022-39, Proposed Item 407(j) (Mar. 9, 2022).

E. Recommend that the SEC allow issuers to have a longer initial phase-in period, lagged annual disclosures and additional phase-in period for newly acquired companies

The MBCA and our members respectfully submit that the proposed phase-in period is not sufficient for bank issuers to adopt the necessary controls and processes to comply with the expansive requirements of the Proposed Rules, particularly if our other recommendations are not reflected in the final rules. This is especially the case if the final rules include requirements that cannot be satisfied with an appropriate level of reliability until underlying science, standards and methodologies are further developed, such as the proposed requirements to disclose Scope 3 emissions estimates and climate scenario analysis and the proposed requirement for issuers to obtain third-party attestation for their Scope 1 and 2 emissions disclosures—in this regard, we would also recommend eliminating the attestation requirement, as assurance standards and methodologies are still evolving. We recommend that the initial compliance deadlines be extended by at least one additional year, and longer if our recommendations with respect to scenario analysis, financial statements disclosures or liability safe harbor are not reflected in the final rules. In addition, if Scope 3 emissions estimates and GHG emissions attestations are required under the final rules, we strongly urge the SEC to extend the relevant initial compliance deadlines with respect to the implementation of such requirements by at least two years so that banks, other issuers, assurance providers and other parties involved in the relevant disclosure and review procedures have more time to develop the expansive framework required as market standards and practices continue to develop. This additional time would also allow the SEC to develop clear, industry-specific guidance for issuers sufficiently in advance of the initial compliance date.

On a going-forward basis, we anticipate that the requirement to disclose the extensive climate-related information required under the Proposed Rules at the same time as the annual report will remain challenging for issuers. This is especially the case because much of the third-party data required to accurately estimate GHG emissions will not be available within such a short time after year-end. We recommend that the SEC allow issuers to provide climate-related disclosures within a 180-day or longer period after year-end. Allowing issuers to provide disclosures within a 180-day or longer period after year-end will alleviate the burden on issuers' internal resources. Of even more importance, a lagged disclosure timeline will increase the quality of the data included in the disclosure by reducing reliance on estimates and giving issuers additional time to appropriately process the data they collect.

Also, we recommend that the SEC provide an additional phase-in period for newly acquired companies, similar to accommodations that currently exist with respect to internal control over financial reporting, so that the acquiror can develop necessary and consistent

procedures.³⁴ Without providing the additional phase-in period, the Proposed Rules could have a chilling effect on public company acquisition activity, especially as it relates to small and private target companies, given the time required for a public company acquiror to identify relevant gaps and implement relevant climate reporting processes at the target level.

* * *

We appreciate this opportunity to provide feedback on the Proposed Rules. We recognize that climate change poses a meaningful issue for financial systems in the U.S. and abroad. However, we are concerned that some aspects of the Proposed Rule would require issuers, especially U.S. banks, to incur serious (and in some cases, insurmountable) disclosure compliance costs and implementation challenges, without providing reliable, consistent and comparable, or decision-useful, information for investors. We welcome the opportunity to provide our assistance as the SEC staff crafts its final rules, as we believe we can provide helpful insight with respect to the banking industry and, in particular, mid-sized banks.

Yours Truly,

A handwritten signature in black ink, appearing to be 'BT', written in a cursive style.

Brent Tjarks, Executive Director
Mid-Size Bank Coalition of America

³⁴ See SEC, Frequently Asked Questions, Management's *Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports* (Sept. 24, 2007), available at <https://www.sec.gov/info/accountants/controlfaq.htm> (recognizing that "it might not always be possible to conduct an assessment of an acquired business's internal control over financial reporting in the period between the consummation date and the date of management's assessment").