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June 16, 2022

Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

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

Dear Office of the Secretary:

Crowe LLP (we or Crowe) appreciates the opportunity to provide input on the Securities and Exchange Commission (SEC or Commission) proposed rules, "The Enhancement and Standardization of Climate-Related Disclosures for Investors" (Proposal or Proposed Rules). We support the SEC's efforts to provide material information to all stakeholders, and we have organized our comments to reflect the SEC's tripartite mission of maintaining fair, orderly, and efficient markets, investor protection, and facilitating capital formation.

Overview

The Proposed Rules assert growing investor demand for climate-related disclosures, and the SEC's mission includes consideration of investor demand. We believe robust stakeholder feedback is a key component of the Commission's execution of its mission, and we agree with Chair Gensler's recent statement that "investors get to decide which risks to take, as long as public companies provide full and fair disclosure and are truthful in those disclosures."[1] When we identify challenges with the Proposed Rules, our views are generally organized to identify the challenge and the specific related cost benefit impact for certain proposed disclosures rather than to identify cost benefit issues in the aggregate. We anticipate this approach will assist the Commission to more fully consider the identified challenges and issues in any final rules.

Maintaining fair, orderly, and efficient markets

Risk and governance disclosures
Capital allocation decisions are increasingly global, and fair, orderly, and efficient markets function as intended when stakeholder decisions are based on transparent and comparable information. Proposed items 1501, 1502, and 1503 of Regulation S-K, appear to foster more consistent and comparable disclosures that investors can use in evaluating the risks of potential investments and ultimately deciding which risks to take.

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[1] https://www.sec.gov/news/speech/gensler-remarks-ceres-investor-briefing-041222

Greenhouse gas (GHG) emission disclosures

Attestation requirements
The Proposal requests feedback on whether large accelerated and accelerated filers should be required to obtain an attestation report on Scope 1 and Scope 2 GHG emissions. Users are in the best position to determine whether they require attestation on GHG emission disclosures, and we can provide attestation on GHG emission disclosures that are based on an appropriate framework and reporting standards. We support phase-in periods for attestation on GHG emission disclosures, particularly given the significant work registrants will need to prepare appropriate governance, policies, controls, and procedures over GHG emissions data and disclosures.

Attestation standards
We support the Proposed Rules including:

- Minimum requirements for attestation service providers, including independence
- Minimum requirements for the content of attestation reports
- Requirements for attestation standards, including that they be publicly available, accessible at no cost, and subject to appropriate due process

While the Proposal also specifies certain additional registrant disclosures with respect to the independent service provider, we recommend the SEC consider whether the audit committee should be tasked with selecting the independent service provider and whether the attestation service provider should be subject to additional minimum quality control standards (for example, engagement acceptance or continuance, professional code of conduct/ethical requirements, engagement performance).

Specifying minimum quality control requirements would foster more consistent quality in attestation reports under the Proposed Rules when the registrant selects a service provider that does not use PCAOB, AICPA, or IAASB attestation standards. We recommend the SEC consider requiring non-accountant service providers to use IAASB attestation standards, which could potentially result in consistency across service providers, since accountants and non-accountants can both use those standards, and those standards appear to meet the minimum requirements in the Proposal.

Many climate-related attestation reports today use AICPA or IAASB attestation standards because these standard setters have issued standards or guidance on sustainability information, including GHG emissions information. The current PCAOB attestation standards do not explicitly address attestations involving sustainability or GHG emissions information, although the PCAOB has recently announced a project to update its attestation standards.[2] We recommend the SEC consider engaging with the PCAOB to understand whether any changes are needed to facilitate the use of PCAOB standards under the Proposed Rules.

Attestation standards – operational challenges
One attestation operational challenge could arise when a registrant has different local statutory requirements. There might be instances where a subsidiary of a registrant has a separate attestation engagement performed over its GHG emissions data to meet local statutory or jurisdictional requirements, and the subsidiary might choose an attestation provider at the local level that differs from the attestation provider for its SEC required attestation. For example, assume the registrant engages an accounting firm to perform the SEC attestation but elects a non-accountant practitioner for the subsidiary. If a subsidiary's attestation work was performed by an accounting firm or practitioner that used AICPA standards, the existing AICPA attestation standards would allow for the accounting firm performing the SEC required attestation to use the work of another practitioner.[3] However, the existing AICPA attestation standards do not appear to address the ability of an accounting firm practitioner to use the work of a non-accountant practitioner, in particular when the non-accountant practitioner uses different

[2] https://pcaobus.org/oversight/standards/research-standard-setting-projects
[3] See AICPA Standards for Attestation Engagements, Clarified at AT-C 105.33

attestation standards. Similar concerns exist with current PCAOB standards. We recommend the SEC engage with the AICPA and/or the PCAOB to resolve these challenges.

Attestation disclosures
The Proposed Rules[4] require the registrant to provide certain additional disclosures with respect to the independent attestation provider when any required GHG emission attestation report is presented. If a registrant uses its financial statement auditor, (who currently must meet the requirements in Article 2 of Regulation S-X), to also perform any required GHG emission attestation, we recommend the SEC consider exempting those registrants from the additional disclosures.

Organizational boundaries
The Proposal indicates the Commission "based [the] proposed GHG emissions disclosure requirement primarily on the GHG Protocol's concept of scopes and related methodology" because the GHG Protocol is used in practice today, and compliance burdens might be minimized. As proposed, using organizational boundaries for GHG emission disclosures consistent with those used in preparation of the financial statements appears understandable from a stakeholder perspective. However, the Proposed Rules appear to define organizational boundaries differently than the GHG Protocol used in practice today. While the Proposed Rules acknowledge[5] this difference, it is unclear how the Commission considered whether those differences impact the Commissions stated objective to ease compliance burdens and, if so, how that was considered, in particular, in the cost benefit analysis. To address any cost benefit questions, we recommend the Commission further engage with investors to more granularly understand the acceptability of using different organizational boundaries for investment decision purposes.

The Proposal appears to double count GHG emissions in certain circumstances. For example, an entity that is consolidated by one registrant might also be an equity method investment of another registrant. Assume entity C is owned 70 percent by registrant A, which consolidates entity C, and 30 percent by registrant B, which applies the equity method of accounting. The Proposal appears to result in registrant A including 100 percent of entity C's GHG emissions in its disclosure whereas registrant B would include 30 percent of the entity C's GHG emissions in its disclosures, for a total of 130 percent of the actual GHG emissions. Presentation differences between the consolidated financial statements and the GHG emissions disclosures for equity method investments might also exist. For example, the consolidated financial statements present equity method investments separately in a single line item (for example, in the consolidated balance sheets and income statements). In contrast, the related GHG emissions would be included in the registrant's GHG emission disclosure rather than being separately presented. The Commission should consider further engaging with users on whether the potential for double counting or the referenced presentation differences are material.

Proposed Item 1504(b)(2) states "a registrant may exclude [from Scope 1 and Scope 2 disclosure] emissions from investments that are not consolidated, are not proportionately consolidated, or that do not qualify for the equity method of accounting in the registrant's consolidated financial statements." Certain registrants might apply the fair value option to an equity method investment, and it is unclear whether such investment may be excluded from Scope 1 and Scope 2 disclosures. In addition, investment companies typically apply fair value accounting to all investments.[6] Investment companies therefore might have challenges with determining whether the emissions from their investments should be classified as Scope 1, 2, or 3. We recommend the Commission consider providing further guidance in any final rule.

Finally, the Proposal indicates the Commission believes "requiring companies to follow a specific external protocol might limit flexibility for registrants and thus reduce their ability to report emissions in a manner that is tailored to their specific circumstances, …but not requiring compliance with the GHG Protocol

[4] See Item 1505(d)
[5] Discussion following footnote 492 of the Proposal, for example
[6] See ASC 946-810-45-2 and ASC 946-323-45-1, for example

would provide some flexibility to the Commission's climate-related disclosure regime and enable registrants to follow new and potentially less costly methodologies as they emerge." Notwithstanding the benefits of flexibility, it is unclear how flexibility allows for the standardized and comparable disclosures that are a stated objective of the Proposal. In addition, registrants might develop their own methodologies, assuming any custom methodology meets the minimum requirements of the rule, which further impacts the goal of standardized and comparable disclosures. In the alternative, the Commission could consider a model similar to the approach currently proposed[7] by the International Sustainability Standards Board (ISSB), which requires that the GHG Protocol be applied to measure GHG emissions, with certain additional disclosures to explain how organizational boundaries were applied, which would be consistent with proposed Item 1504(e) of Regulation S-K. In this circumstance, however, the Commission should monitor how the GHG Protocol is modified in the future.[8]

Use of fourth quarter estimates – changes in estimates
The Proposed Rules[9] allow a registrant to "use a reasonable estimate of its GHG emissions for its fourth fiscal quarter, together with actual, determined GHG emissions data for the first three fiscal quarters, as long as the registrant promptly discloses in a subsequent filing any material difference between the estimate used and the actual, determined GHG emissions data for the fourth fiscal quarter." Financial reporting, including preparing GHG emission disclosures, often involves developing and using estimates. However, when actual results materially differ from the original estimate, as contemplated in the Proposed Rules, auditors typically evaluate whether the material difference was due to a change in estimate or an error.

The Proposal states registrants can use a ***reasonable estimate*** [emphasis added] when fourth quarter information needed to report actual GHG emissions is not available, so we believe the SEC generally intended that a reported change typically would be a change in estimate. However, we recommend the SEC clarify whether registrants should report material changes in estimate using any specific method or mechanism of disclosure (for example, similar to ASC 250 change in estimate disclosure requirements in an 8-K filing, in a 10-Q filing, or through amending the 10-K).

The Proposed Rules' accommodation to use fourth quarter estimates in GHG emission disclosures appears premised on the timing of the availability of data. Availability of data also has significant impacts on the auditor's ability to perform its work as the auditor's work is typically performed subsequent to the registrant preparing the disclosure and operating its controls and procedures. The Proposal also states the ability to use fourth quarter estimates and then subsequently report on any material difference between the estimate and the actual "should also help mitigate the GHG emissions compliance burden for registrants."[10] The use of fourth quarter estimates will likely increase compliance burdens because both preparers and auditors will need to perform their work twice, once for the reported estimate and once for the actual result. We believe such costs should be considered in the cost benefit analysis of any final rules.

In addition, the Proposed Rules' rationale for GHG emissions disclosures appears focused on longer term time horizons (for example, usefulness in transition risk analysis, evaluation of progress towards climate-related goals, and investment or voting decisions related to the impacts of regulatory, policy, and market constraints).[11] We recommend the Commission therefore consider whether GHG emission disclosures should be reported outside of Form 10-K with a longer filing deadline to facilitate the use of actual fourth quarter GHG emissions data.

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[7] https://www.ifrs.org/content/dam/ifrs/project/climate-related-disclosures/issb-exposure-draft-2022-2-climate-related-disclosures.pdf, page 21
[8] https://ghgprotocol.org/blog/ghg-protocol-assess-need-additional-guidance-building-existing-corporate-standards
[9] See Item 1504(e) of Regulation S-K
[10] Footnote 391 of the Proposed Rules
[11] Discussion in Section II.G.1.a of the Proposal

Material errors in fourth quarter estimates
There could be situations where material errors are discovered in GHG emission disclosures, which might also impact an independent service provider's attestation report. It is unclear in the Proposed Rules how a registrant should evaluate whether its disclosure controls and procedures were appropriately designed and operated to detect a material error. It is similarly unclear how or where a registrant should report material errors in GHG emission disclosures (for example, in a Form 8-K similar to non-reliance on previously issued financial statements, in its next periodic report, via some other mechanism) and how a service provider should evaluate its reporting obligations to various stakeholders (for example, those charged with governance, management, the SEC). The SEC should consider providing further guidance on whether any specific method or mechanism of evaluation or disclosure would be required in this circumstance.

Consideration of international frameworks

Flexibility for entities subject to multi-jurisdictional reporting
Registrants, both domestic and foreign, are subject to various jurisdictional reporting rules. Allowing the use of alternative reporting frameworks that meet certain minimum requirements would be beneficial for registrants that must report climate-related information in multiple jurisdictions. For example, we recommend the SEC consider allowing the use of ISSB standards for both foreign and domestic registrants with appropriate reconciliation to the requirements of the Proposed Rules. While currently in development, the ISSB standards are based on frameworks similar to the Proposed Rules. The SEC could continue to monitor and evaluate ISSB standards to ensure they are fit for purpose under the Proposed Rules prior to finalization.

Structured data

XBRL
The Proposed Rule requires Inline XBRL tagging of various disclosures, which we believe is appropriate and consistent with the Commission's goal to provide readily available and easily accessible information to stakeholders.

Investor protection

Summary
We support the SEC's objective of disclosure of material climate-related information. As we discuss, certain aspects of the Proposed Rules might be changed with no negative impact to investor protection. In addition, certain investor protection aspects of the Proposed Rules appear to have operational challenges, which could impact the overall cost benefit analysis. We believe when disclosure costs outweigh benefits, investor protection might be negatively impacted; however, we offer suggestions to alleviate the operational challenges.

Climate-related financial statement metrics

Prescriptive thresholds for climate-related metrics – operational challenges
The Proposed Rules require disclosure of various disaggregated financial metrics in the audited financial statement footnotes including the financial impact of and expenditures related to both:

- severe weather events and other natural conditions
- transition activities

The Proposal also requires disclosure of the impact of identified climate-related risks on these financial statement metrics. The metrics specify a disclosure threshold, in absolute value terms, of one percent of the specific financial statement line item, and the Proposal asks whether the metrics would provide "material or decision-useful information to investors."

FASB Concepts Statement 8 states "usefulness in making decisions is the objective of financial reporting" (that is, the objective of financial reporting is decision-useful information). However, one of the fundamental qualitative characteristics of useful financial information is materiality, which "is an entity-specific aspect of relevance"[12] because "immaterial information does not affect a user's decision."[13] Therefore, to be decision-useful, financial information must necessarily be material.

Auditors need to express, as a specified amount, a materiality level for the financial statements taken as a whole, which facilitates planning the nature, timing, and extent of audit procedures.[14] Preliminary estimates of financial statement amounts are often used to establish initial materiality levels,[15] and then the auditor reevaluates the established materiality levels as the audit progresses.[16]

Both preliminary and final quantitative materiality levels typically significantly exceed the Proposal's disclosure threshold (that is, one percent of a specific financial statement line item) because those materiality levels are based on evaluating materiality with respect to the financial statements taken as a whole. The Proposal, therefore, might present auditors with operational challenges including:

- While auditors can establish materiality levels for particular accounts and disclosures,[17] the Proposed Rules might effectively require the auditor to set the one percent threshold as a de facto materiality threshold for a significant number of line items in the financial statements for purposes of planning the nature, timing, and extent of audit procedures and testing of internal control over financial reporting (ICFR). In many cases, such a threshold would require significantly more audit testing, to the extent materiality for the financial statements taken as a whole exceeds the one percent threshold for that particular financial statement line item.
- Auditors typically perform testing at interim dates using a preliminary material level, prior to the financial statements for the period being available. While auditors are required to consider, when setting a preliminary materiality level, whether any known or expected changes in the company's financial statements, including significant transactions or adjustments, might impact financial statements at the end of the period, many acute climate-related financial impacts result from unpredictable events. This might cause significant changes to the planned level of testing based on preliminary materiality levels, which would have a significant impact on the nature, timing, and extent of year end audit procedures given the one percent threshold and the number of individual financial statement line items that might be impacted.
- A one percent disclosure threshold at the financial statement line-item level is a conceptual departure from other prescriptive bright-line thresholds that exist in Regulation S-X and S-K. The Proposal points out that certain currently required disclosures are based on a one-percent threshold,[18] but the examples in the proposal are generally based on single, larger financial statement line items (for example, revenues, total assets, net asset value) rather than at the individual financial statement line item level.

Each of these challenges might individually or in the aggregate increase audit costs, which impact both preparers and investors. While the Proposal provides a high-level estimate of costs related to increased audit hours for the financial statement metrics, it is unclear whether or how these operational challenges

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[12] Concepts Statement No. 8 – Chapter 3, paragraph QC11.
[13] Ibid, paragraph BC3.18.
[14] PCOAB Auditing Standard (AS) 2105, paragraph .06
[15] Ibid.
[16] Ibid, paragraph .11
[17] Ibid, paragraph .07.
[18] See the Proposal, footnote 347

were contemplated in that estimate. The estimate appears to be based on audit hours generally, but audit hours generally are correlated to materiality levels established for the financial statements taken as a whole and not the one percent threshold required in the Proposed Rules. We recommend the SEC consider these operational challenges in its cost benefit analysis of any final rule.

The Proposal's cost benefit analysis also states the cost of preparing the required climate-related financial statement metrics is "[b]ased on staff experience reviewing financial statements." Preparation of financial statements necessarily includes more than review as preparation also includes, among other actions, designing and operating ICFR, which will require preparers to consider precision at a level that in most cases will be less than materiality to the financial statements taken as a whole. We recommend the SEC undertake further analysis of the costs of preparing disclosures at the one percent threshold in any final rule.

The Proposal states the SEC "agree[s] that registrants are currently required to disclose material financial impacts on the financial statements, the proposed climate-related financial statement metrics should provide additional transparency into the impact of climate-related events on information reported in the financial statements that would be relevant to investors when making investment or voting decisions." We recommend the SEC consider clarifying how preparers and auditors should interpret this statement in the context of FASB Concepts Statement No. 8. Relevant information is capable of making a difference in a decision, and materiality is an entity-specific aspect of relevance. The Proposal appears to suggest the one-percent threshold would provide information relevant to making decisions, which might imply the Proposal asserts the one percent threshold results in disclosure of material information. This is an especially challenging conclusion from the perspective of the auditor's assessment of materiality at the level of the financial statements taken as a whole. While the Proposal cites certain feedback to the FASB's recent agenda invitation to comment as support for further disaggregation,[19] user feedback on the one-percent threshold is especially important for the Commission to consider given the disaggregation requests to the FASB appear to contemplate neither a bright-line one percent disclosure threshold at the individual financial statement line-item level, nor any quantitative threshold that would de facto provide material disclosures.

Prescriptive thresholds for climate-related metrics – other challenges
The Proposed Rules also might have impacts beyond operational challenges. For example, registrants might currently provide disaggregation exceeding the minimum requirements of Regulation S-X on the face of their financial statements. Based on our discussions with various stakeholders, we believe registrants will experience operational challenges with the one percent threshold similar to auditors, which might disincentivize current disaggregation practices and provide less information to investors. It is also unclear whether the one percent threshold will achieve the Proposal's stated objective of eliciting consistent and comparable disclosures across registrants. Given the one percent threshold is applied on a financial statement line item basis, a specific registrant might not have comparable disclosures on a year over year basis (because the one percent threshold will necessarily vary each year) and disclosures might not be comparable on a registrant by registrant basis given the variability that exists in the financial statement line items of individual registrants.

Registrants typically identify, assess, and manage risk, including climate risk, based on materiality. To evaluate the effectiveness of controls and perform substantive procedures over financial statement footnotes that include disaggregated climate-related financial statement metrics, auditors will be required to gain an understanding of management's processes over governance, managing, and monitoring for climate-related risks. Given the one percent disclosure threshold, we expect that auditors will be required to gain an understanding of climate-related risks and perform controls and substantive testing procedures at lower levels than most other financial statement accounts and notes to the financial statements, which likely increases audit costs.

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[19] Ibid, footnote 360.

We offer the Commission suggestions that might resolve these concerns including whether:

- Alternatives to the one percent threshold, for example a materiality principle, might be more operational from a cost benefit perspective and resolve any impacts of operational challenges. The "Reasonable alternatives" section of the Proposal does not appear to address any alternatives to the one percent threshold, and we observe auditors are well versed in assessing materiality in relation to the financial statements taken as a whole.
- Users have provided sufficiently precise feedback on how they assess materiality in the context of climate-related financial statement metrics, including whether a different threshold would be sufficient to provide material information to users.
- As the Commission's designated accounting standard setter, the FASB might be best suited to further assess user needs for financial statement footnote disclosure. We observe the FASB is uniquely positioned to foster a robust due diligence process as it relates to user needs for further disaggregation of climate-related information, particularly given their current project on income statement expense disaggregation.[20]
- S-K Item 303 might be revised to specifically require discussion of entity specific, material climate-related metrics in lieu of presentation of such metrics in the audited financial statement footnotes. Item 303 might also be revised to require discussion of climate-related matters in critical accounting estimates.

Auditing climate-related metrics
Proposed Item 14-02(a) of Regulation S-X requires disclosure of "contextual information, describing how each specified metric was derived, including a description of significant inputs and assumptions used, and, if applicable, policy decisions made by the registrant to calculate the specified metrics." Significant judgment might be applied in determining what portion of a financial impact or transition activity is climate-related. Measurements that involve forecasts of future cash flows might be, in certain circumstances, particularly challenging to separate climate-related impacts. We offer the following examples:

- Three registrants decide to construct identical solar powered datacenters in the same location. Each might come to different conclusions on what portion of those expenditures should be considered climate-related. One registrant might conclude that only expenditures for solar panels are climate-related. Another registrant might conclude that both the solar panels and a portion of the cost of the land should be considered climate-related because the land in question is in a flood-remote area that carries a premium to land in a more flood-prone area. A third registrant might conclude the entirety of the datacenter cost is climate-related. These differences in judgment could lead to materially different disclosures.

- A financial institution determines it is in a three-year cumulative loss position due to negative economic factors unrelated to climate that have significantly impacted loan losses. In addition, the financial institution determines that it is not more likely than not that certain of its deferred tax assets will be realized and thus establishes a valuation allowance. This conclusion is largely based on the lack of objective evidence to support realization because of uncertainty with respect to the length and duration of negative economic factors. The institution also has a large portfolio of loans that might be impacted by significant climate-related events in the future, which lends further uncertainty to the institution's forecasts. In this fact pattern, it is challenging to determine whether the recognition of the valuation allowance was due to negative economic factors, climate-related impacts, or both, and to determine what portion of the valuation allowance should be disclosed as climate-related.

- An entity experiences "[c]hanges to revenue or costs from disruptions to business operations or supply chains" due to a severe weather event or other natural condition. Calculating an increase

[20] https://fasb.org/Page/ProjectPage?metadata=fasb-Disaggregation%E2%80%94IncomeStatementExpenses-022820221200

> to costs might be straightforward given the costs are recorded in the entity's financial records. However, calculating any decrease in revenue would be more challenging and might involve a hypothetical estimate of lost revenues. Such an estimate would be particularly challenging from an audit perspective given it might represent a prohibited non-GAAP measure.

Given the complexities and judgments involved in these examples, there is a significant risk of inconsistent and incomparable disclosures between registrants, notwithstanding the required contextual information. The Commission should consider providing further guidance and examples of how preparers should evaluate the Commission's intent with respect to identifying climate-related financial impacts and transition activities.

Considerations for ICFR
Financial statements filed with the Commission must comply with generally accepted accounting principles, including "certain disclosures which must be included in any event, in financial statements filed with the Commission"[21], which include the climate-related financial metrics under the Proposal. ICFR is a process, in part, designed to provide reasonable assurance that "transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles."[22] The one percent threshold for the climate-related financial metrics will require registrants to design and operate many aspects of their ICFR at a level of precision that is likely much lower than controls that operate today because the one percent threshold is pervasive to all financial statement line items. When required, auditors, in turn, must test the design and effectiveness of those controls at the lower level of precision. It is unclear whether the Proposal's cost benefit analysis has considered such impacts, and we recommend the Commission specifically consider these challenges in the cost benefit analysis of any final rules.

Transition

General
Chair Gensler recently remarked that "investors are already making investment and voting decisions using information about climate risk…[and] hundreds of companies are already disclosing this information."[23] However, while many disclosures provided today are based on the frameworks on which the Proposal is based, the disclosures provided today generally have significant gaps when compared to the Proposed Rules. Registrants are in various stages of performing gap analysis given it is generally premature to begin designing controls, policies, and procedures until any final rule is approved. We encourage the Commission to carefully consider preparer feedback on the Proposed Rules and to provide a feasible transition period in any final rule. The Commission should consider ongoing outreach with registrants prior to publishing a final rule to understand registrant perspectives on feasible transition periods as registrants develop their climate-related reporting processes and procedures.

Transition for climate-related financial metrics
The Proposal might have significant operational challenges for preparers and auditors because it will necessarily take significant time and effort to design appropriate controls and procedures, gather the appropriate data, and operate appropriate controls and procedures over the relevant disclosures, particularly at the one percent threshold for all entities currently included in the preparer's organizational boundaries. Absent any changes to the Proposal to resolve these operational challenges, we recommend the Commission consider an additional phase-in period for inclusion of climate-related financial metrics in the financial statement footnotes to allow for sufficient time to develop the controls and procedures necessary for high quality financial reporting at the one percent threshold.

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[21] Rule 4-01(a)(1) of Regulation S-X.
[22] See Exchange Act Rule 13a-15(f)(2)
[23] https://www.sec.gov/news/speech/gensler-remarks-ceres-investor-briefing-041222

The Proposed Rules require disclosure of climate-related financial metrics for all financial statement periods presented in a registrant's filing, including historical periods in which the procedures and controls necessary to track data at the one percent threshold were not in existence. The Proposed Rules point out that a registrant might avail itself of certain accommodations[24] when a metric has not previously been presented and "historical information necessary to calculate or estimate such metric is not reasonably available to the registrant without unreasonable effort or expense." In our experience, the use of these accommodations is rare, and it would be useful for the Commission to mandate only prospective application of the requirements in any final rules.

Transition for GHG emissions disclosures
Anecdotally, we observe that the majority of registrants do not include GHG emissions disclosure within their Form 10-K. We have timing concerns related to the ability of registrants to design and operate effective disclosure controls and procedures over GHG emission disclosures within the timeframes in the Proposal. We recommend the Commission consider providing an additional phase-in period for GHG emissions as well.

Forum for implementation questions
The Proposed Rules have a number of complexities, and implementation questions might arise only when preparers and auditors have their first experience in applying any final rules. We encourage the Commission to evaluate how to efficiently address application questions (for example, through compliance and disclosure interpretations) and disseminate such information to all practitioners on a timely basis.

Capital formation

Emerging growth companies
Emerging growth companies (EGCs) currently have a number of reporting accommodations available as created under the Jumpstart Our Business Startups (JOBS) Act of 2012. In addition, Section 72002 of the Fixing America's Surface Transportation Act (FAST Act) of 2015 required the SEC to "further scale or eliminate requirements of Regulation S–K, in order to reduce the burden on emerging growth companies…while still providing all material information." In the recent past, the Commission has noted[25] it believed there was not a significant effect on the ability of investors to make informed investment decisions in the case of EGCs when investors receive less or different disclosure in certain circumstances. While the Proposed Rules were clearly not contemplated in the JOBS or FAST Acts, the Commission should consider whether it would be appropriate to exempt EGCs, particularly given the Commission's prior conclusions on whether EGC investors are harmed by different levels of disclosure.

Business Acquisitions
The Proposed Rules require the information specified in proposed Items 1500-1507 of Regulation S-K to be included in Form S-4 for acquisition targets. Form S-4 currently includes significant capital formation focused accommodations for non-reporting targets (for example, Instruction 1 to Item 17(b)(7) of Form S-4 allows for financial statements of non-reporting targets to be unaudited in certain circumstances). However, the Paperwork Reduction Act analysis in the Proposed Rules suggests significant time and cost burdens for Form S-4, even under the assumption that only 50 percent of the estimated burdens relate to the target. Requiring information pursuant to Items 1500-1507 of Regulation S-K for non-reporting targets might be contrary to the spirit of the capital formation accommodations in Form S-4, and we recommend the Commission consider exempting non-reporting targets. Similar concerns apply to non-reporting targets in Form F-4.

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[24] See Securities Act Rule 409 and Exchange Act Rule 12b-21
[25] https://www.sec.gov/rules/proposed/2019/34-85814.pdf

For all business or asset acquisitions, the Proposed Rules appear to require inclusion of the acquired business' or asset's information in the registrant's climate-related disclosures in the year of acquisition. Commission staff have, in the past, acknowledged the challenges of a limited amount of time to integrate an acquired business into the registrant's internal control over financial reporting[26] and disclosure controls and procedures.[27] We recommend the Commission consider whether it would be appropriate to codify similar views for acquired businesses or assets in the context of climate-related disclosures.

Post implementation review of costs and benefits
The benefits discussed in the Proposed Rules are largely non-quantitative in nature. While the cost information has more quantitative data, much of the data is based on high-level estimates. We agree with the Commission's perspective that "a rule's potential benefits and costs should be considered in making a reasoned determination that adopting a rule is in the public interest."[28] We encourage the Commission to re-evaluate, after an appropriate passage of time following the effective date of any final rule, the potential costs and benefits with empirical data to determine whether the objective is being achieved.

Closing

We thank the SEC for providing the opportunity to provide feedback on the Proposed Rules, and we are available to answer any questions that the staff have regarding the views expressed in this letter.

Sincerely,

Crowe LLP

Crowe LLP

[26] https://www.sec.gov/info/accountants/controlfaq.htm
[27] Question 214.01 at https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm
[28] https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf