NATIONAL ASSOCIATION OF REALTORS®

June 17, 2022

Vanessa A. Countryman
Secretary
Attention: File Number S7-10-22
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Secretary Countryman:

The National Association of REALTORS (NAR) appreciates this opportunity to comment on the Securities and Exchange Commission's (SEC) proposed rule, "The Enhancement and Standardization of Climate-Related Disclosure for Investors," file number S7-10-22 (the "Proposal"). NAR represents real estate professionals involved in all aspects of buying and selling real estate.

NAR supports the SEC's efforts to provide investors with disclosures and data that allow them to make informed investment decisions. However, NAR is concerned that the current proposed rulemaking does not provide market participants with enough time to implement the required disclosures, may have serious liability implications for real estate agents and brokers and may add significant regulatory burden, complexity and ambiguity to real estate companies to comply, especially for franchises and independent contractors.

The suggested implementation and compliance time-frame is inadequate

In the Proposal, the SEC repeatedly references an adoption period of December 2022 for "illustrative" purposes. Given the wide range of proposed disclosures, with "limited" or "reasonable" assurance required in many instances, we believe that a year-end adoption date is too aggressive, especially in light of the concerns outlined below. Market participants require the opportunity to develop efficient and effective disclosure regimes tailored to their specific markets and more time should be allotted for those efforts to enhance compliance.

NAR would suggest that the proposed compliance deadlines be extended by at least one year and continue to incorporate the proposed staging according to a registrant's size and activity. Scope 3 requirements would need additional flexibility, with the reporting deadline pushed back by at least an additional two years.

NAR has concerns about franchises and independent contractors

Many large, publicly traded real estate companies operate with a franchise business model, with real estate professionals serving as independent contractors. For example, a publicly traded real estate company may have a large headquarters building, which the company would need to report for Scope 1 and Scope 2 emissions. However, its local offices are franchises and its real estate agents and brokers are independent contractors. According to the proposal, the company must account for the emissions of all franchises. NAR is concerned that the effort to account for these emissions will become a massive on-going regulatory cost to the company, with disproportionate benefits.

NAR is also concerned that there is no guidance related to independent contractors. Should publicly-traded real estate companies attempt to account for the emissions of each of their agents and brokers? The proposal is silent on this point. While there are nearly 1.6 million members of NAR, there are hundreds of thousands of other practicing real estate professionals that are not REALTORS®, with nearly all being classified as independent contractors. Are publicly-traded real estate companies required to collect data for and report on the emissions for each of their individual real estate agents and brokers as independent contractors? Again, the proposal provides no direction on this point, nor does the SEC provide any guidance as to how and under what protocols or criteria a company is to collect this data in a way that complies with the proposed regulation. Real estate is one of many industries utilizing a large independent contractor workforce, so guidance on this aspect would vastly improve understanding and compliance for many publicly traded companies and industries.

Scope 3 emission disclosures require more guidance and stronger safe harbors

NAR has concerns about the extent of Scope 3 emissions and the impact of complying with a regulation with no precedent in the real estate industry and with systemic challenges in collecting and analyzing the data. For example, within commercial real estate it has been estimated that 85 percent of total emissions may fall under Scope 3. This is the case for the majority of leased assets, where emissions are often outside of operational control, such as those associated with tenant energy consumption.

Under the Proposal, disclosure of Scope 3 greenhouse gas emissions is required if deemed material or if the registrant has set an emissions reduction goal. While the SEC does not propose a quantitative threshold for determining materiality, it "notes that some companies rely on a quantitative threshold such as 40 percent when assessing the materiality of Scope 3 emissions."

We urge the SEC to provide more clarity and guidance in order for our member organizations to provide data that is reliable and consistent across the industry. Scope 3 emissions disclosure is currently subject to enormous data and methodological challenges and will not result in comparable, consistent, reliable decision-useful information for investors.

The SEC is also proposing a Scope 3 emissions Safe Harbor. This safe harbor would allow a company to disclose emissions that "would be deemed not to be a fraudulent statement" unless it was made "without a reasonable basis or was disclosed other than in good faith."

The SEC recognizes the data collection, verification, and other difficulties in estimating emissions up and down a registrant's supply chain. It thus proposes a "targeted safe harbor for Scope 3 emissions data in light of the unique challenges associated with this information."

NAR supports the SEC's proposed safe harbor and believes it should be:

- Permitted even if Scope 3 disclosure is furnished rather than filed in order to address potential liability under Section 10(b) of the Exchange Act;
- Strengthened in light of the volume of data and number of different sources registrants may need to obtain information from in order to comply with the SEC's proposed disclosure requirements. Rather than requiring that registrants

have a "reasonable basis" to believe that the Scope 3 disclosure is accurate, which would require some registrants to conduct diligence on thousands of counterparties at least annually, the safe harbor should apply, unless the registrant has actual knowledge that the third-party information it is using in connection with its Scope 3 disclosures is erroneous; and

- Fully covers good faith Scope 3 reporting, or decisions that Scope 3 reporting is not required, without any future sunsetting of that safe harbor.

Potential Liability Implications

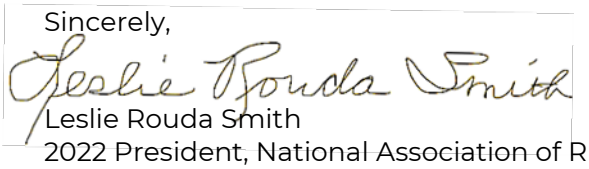
Taking into account the complexity related to Scope 3 emissions and franchise business models if a real estate company is required to collect, analyze, assess, and quantify emissions, NAR is concerned about the confusing standard for materiality of Scope 3 emissions. While the draft rule does not set a standard, quantitative threshold for determining materiality, it does suggest that if a company's Scope 3 emissions constitute at least 40 percent of a company's total greenhouse gas emissions, then such emissions might be material. The Supreme Court (*TSC Industries v. Northway*) has held that an item is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision. The lack of a clear definition of materiality in the proposal could potentially add liability to real estate companies in which their activities could be considered material in a reporting company's financial disclosures.

NAR is also concerned about the lack of accuracy and consistency in quantifying Scope 3 emissions. Scope 3 emissions modeling can be unreliable and may vary across academic and scientific institutions. The other possibility for monitoring Scope 3 emissions would be through direct monitoring and third-party auditors, which brings another layer of complexity and liability concerns related to an expansive regulatory regime.

Given the above-stated difficulties in calculating Scope 3 emissions, NAR would recommend that Scope 3 disclosures should be voluntary unless part of a clearly articulated emissions reduction plan. At the very least, NAR would encourage a delay in Scope 3 reporting requirements by at least two additional years. We urge the SEC, therefore, to provide the time needed to accurately and comprehensively identify Scope 1 and Scope 2 emissions before having to develop the systems and processes necessary for Scope 3 emissions disclosures.

NAR appreciates the opportunity to comment on this proposed regulation.

Sincerely,



Leslie Rouda Smith
2022 President, National Association of REALTORS®