American Property Casualty Insurance Association
INSURING AMERICA apci.org

June 17, 2022

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Via www.sec.gov/cgi-bin/ruling-comments

Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors
File Number: S7-10-22

Dear Ms. Countryman:

The American Property Casualty Insurance Association ("APCIA") appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC") proposed rules regarding climate-related disclosures.[1] APCIA is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe. Accordingly, APCIA can offer a unique perspective on public policy issues from varying viewpoints. These comments are presented from the perspective of publicly traded and private insurers because both play an active role in the securities market as major institutional investors and commercial liability underwriters.

Property casualty insurers are leaders in evaluating and addressing the impacts of weather-related events and natural catastrophes, having advocated for stronger mitigation, resilience efforts, and building codes for as long as there has been property insurance. As insurers of physical risks, insurance companies confront the impact of weather and climate change in the normal course of their business. Property casualty insurers are experts in understanding and evaluating weather and climate-related risks, and these risks are addressed in insurers' enterprise risk management and underwriting practices. Insurers continue to enhance modeling capabilities, while also encouraging the proliferation of renewable energy and supporting the transition to clean energy options by, for example, providing warranty insurance for wind farms and photovoltaic systems.

As the leading trade for the industry, APCIA proactively adopted several sets of forward-leaning guiding environmental principles, including principles for climate-related risk disclosures. Notably, and consistent with the SEC's investor protection mandate, these principles state that environmental disclosures should be relevant to, and consistent with, the insurance business model, be material, have benefits exceeding the costs, and only require reporting of data that can

[1] Release No. 33-11042, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,334 (Apr. 11, 2022).

be measured through standardized processes. Unfortunately, as explained below, APCIA's membership believes the SEC's proposed rules contradict each of these principles and fail to satisfy the SEC's goal of providing consistent, comparable, reliable, and decision-useful information for the investing public.

APCIA is submitting this comment letter in an effort to provide recommendations to the proposed rules that are workable for issuers and consistent with the SEC's goal of establishing comparable, reliable, and decision-useful disclosures. Instead of moving to the one-size-fits-all approach in the proposed rules, the SEC should continue to rely on well-established materiality-based disclosure standards. Under the longstanding approach of the U.S. securities disclosure regime, it is the responsibility of companies' management to determine, consistent with SEC rules and guidance, what information is material to a reasonable investor in assessing the registrant's financial position, results of operations, and cash flows. This framework for materiality has served investors well because registrants are afforded the flexibility to identify risks relevant to their business. For example, insurance company registrants are already disclosing material climate-related risks in their risk factor disclosures under Regulation S-K Item 105. As such, existing SEC rules and guidance are sufficient to impel companies to disclose risks from recurring weather-related events and longer-term climatic changes that are material to their businesses.

APCIA is concerned that the proposal would modify the well-established meaning of materiality, compel disclosure untethered to materiality, and establish an arbitrary numerical disclosure threshold without any consideration of qualitative factors – all of which would impose significant costs and burdens on insurers and subject insurers and their policyholders to unnecessary litigation risk related to these disclosures. At the same time, the proposal would make climate-related disclosures less useful to investors because material disclosures will be buried beneath layers of immaterial information, while increasing the cost of investment as registrants incur significant costs to comply with the extensive and complex disclosure requirements. For these reasons, any final rule must allow sufficient flexibility for issuers to provide disclosures that are material and relevant to their particular industry, rather than the one-size-fits-all approach in the proposal. Providing flexibility will also help issuers adjust their disclosures to account for any future changes to the existing framework or the development of other disclosure standards, such as the recommendations of the Task Force for Climate-related Financial Disclosures ("TCFD") and those being considered by the International Sustainability Standards Board.

In the event the SEC decides to move forward with this proposal, APCIA supports harmonizing the final rule with existing voluntary disclosure frameworks, such as the recommendations of the TCFD, in a manner consistent with the SEC's mission of protecting investors and maintaining efficient capital markets. Although the SEC's proposal broadly draws upon the TCFD framework, the proposed rules are significantly more prescriptive and granular. For example, the proposed rules would require financial impact disclosures to be made on a disaggregated line-item basis in the notes to the financial statements based on a fixed 1% threshold, whereas climate-related financial disclosures under the TCFD framework are subject to a materiality assessment.[2]

Creating yet another disclosure standard – with a different threshold for disclosure – would further complicate the current reporting environment. For example, the plethora of existing frameworks already has led to competing measurements of climate change risk. Moreover, deviating from the TCFD recommendations could impose conflicting climate reporting requirements on insurers that already are making disclosures on the National Association of Insurance Commissioners' ("NAIC") Climate Risk Disclosure Survey, a tool for state insurance regulators to request from insurers certain disclosures of insurers' assessment and management of their climate-related risks. The NAIC updated the survey in April 2022 to align it more closely with the TCFD recommendations. Fifteen states plan to utilize the NAIC survey in 2022 for insurers licensed in those jurisdictions, accounting for nearly 80 percent of the U.S. insurance market.

In addition, the SEC should provide more time before mandating climate-related disclosures. Assuming the proposed rules are adopted largely as proposed, companies will need to expend a significant amount of time and resources to build the systems, processes, and controls necessary to comply with the extensive and complex new rules. The SEC should consider phasing in any mandated disclosures over a period of several years – at least a minimum of two years – with each requirement subjected to careful scrutiny and refinement, beginning with the least burdensome. An incremental approach is more likely to produce an efficient disclosure regime while also giving issuers and other market participants time to build out the requisite capabilities to produce reliable disclosures.

APCIA urges the SEC to address these overarching issues, as well as the specific issues discussed below, before finalizing the proposed rules. It is critical that the benefits of any final rules outweigh the significant additional costs that would be imposed on issuers.

Definition of Climate-Related Risks

The definition of climate-related risks in the proposed rules conflates weather and climate-related risks and the proposal does not clarify how to attribute an event or a portion of an event to changing climate conditions. As proposed, "climate-related risks" means "the actual or potential negative impacts of climate-related conditions and events on a registrant's consolidated financial statements, business operations, or value chains, as a whole."[3] Registrants would be required to disclose the "impacts on any relevant line item in the registrant's consolidated financial statements during the fiscal years presented arising from severe weather events and natural conditions, and the identified physical risks," which the proposing release collectively refers to as "climate-related events."[4] However, the term "severe weather event" is not defined in the proposal, and it is unclear how to attribute an event or a portion of an event to changing climate conditions as opposed to "severe weather events and natural catastrophes", which insurers already discuss in their periodic reports and are reflected in their audited financial statements.

[2] Task Force on Climate-related Financial Disclosures, Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures (Oct. 2021), at 14.
[3] Proposed Rule 229.1500(c).
[4] Proposing Release, 87 Fed. Reg. at 21,345.

APCIA members collect meteorological data regarding weather-related events and analyze long-term trends based on that data in combination with socio-economic developments and loss to identify indications of changing risk (increasing losses) from weather-related events. Research methods enable scientists to state whether, in a specific region, extreme events (such as rain above a certain amount or temperatures above a certain threshold) have become more or less likely, compared with a world without climate change.

At the same time, attributing an event or a portion of an event directly to climate change is simply not possible, given the varying factors and underlying assumptions. For example, there have always been tornado and hail events and the severity of those events has been correlated, at least in part, to the Pacific decadal oscillation ("PDO"), a naturally recurring pattern of ocean-atmosphere climate variability centered over the mid-latitude Pacific basin. For those events, companies are unable to differentiate a storm or the portion of a storm attributable to climatic changes that have developed over 30 or more years from a storm or the portion attributable to the PDO or other factors. If property casualty insurers, which have the benefit of specialized expertise in this area, are unable to make these differentiations despite their expertise, companies in other industries will not be able to do so either.

The difficulty in attributing a weather-related event to climate change is further highlighted when considering the National Oceanic and Atmospheric Administration's explanation of the difference between weather and climate: "Weather is what you experience when you step outside on any given day. In other words, it is the state of the atmosphere at a particular location over the short-term. Climate is the average of the weather patterns in a location over a longer period of time, usually 30 years or more."[5]

It follows that there is no way to isolate the impact of climate change on other financial metrics, such as catastrophe losses. For example, there is no known way of attributing how much of a potential increase in the severity of California wildfires is due to climatic change over a period of 30 years or more versus other factors (e.g., population growth, short-term weather-related conditions, increases in the concentration of risks, or less than prudent land-use planning). Because the proposed rules conflate weather and climate-related events, the resulting disclosures likely would overstate the effects of climate change. To prevent misleading and inconsistent disclosures, the final definition of climate-related risks should acknowledge that registrants are not able to determine the extent to which weather events or natural conditions simply represent weather or are exacerbated by climate change.

Financial Statement Metrics

The final rule should not require climate-related financial statement metrics to be included in the audited financial statements, as such requirement creates significant costs and challenges to registrants and will not achieve the SEC's goal of providing investors with consistent, comparable, reliable, and decision-useful information. Under the proposed rules, climate-related financial statement metrics are required in the audited financial statements[6] and thus subject to

[5] National Oceanic and Atmospheric Administration, What's the difference between climate and weather? (accessed June 17, 2022), available at https://www noaa.gov/explainers/what-s-difference-between-climate-and-weather.
[6] Proposing Release, 87 Fed. Reg. at 21,363.

audit by the registrant's independent registered public accounting firm and would fall within the scope of the registrant's internal control over financial reporting ("ICFR"). However, rough estimates of the proportion of financial metrics that may be attributable to climate change (e.g., from storms and natural catastrophes) are both speculative and not currently derived from the systems or processes used to record and report financial data in a registrant's financial statements. Accordingly, it would be inappropriate and overly burdensome and costly for registrants to subject these metrics to ICFR. As discussed below, APCIA believes these costs would far exceed any potential benefit to investors.

Expected Insured Losses

APCIA is concerned with the proposed requirement to disclose changes to total "expected insured losses" due to severe weather events and other natural conditions.[7] This requirement would be inconsistent with insurers' methods of accounting because insurers report incurred losses, rather than expected losses, as required under both U.S. GAAP and statutory accounting principles. As a result, requiring disclosure of expected insured losses would contradict the statement in the proposing release that registrants would "apply the same set of accounting principles that it is required to apply in preparation of the rest of its consolidated financial statements."[8] Therefore, the requirement to disclose changes to "expected insured losses" should be removed from the final rule.

Financial Statement Footnote Disclosure

The proposed requirement to disclose financial statement metrics that exceed 1% of a financial statement line item[9] would lead to unprecedented challenges for insurance companies. The enumerated concepts of financial impact metrics and expenditure metrics in the proposal are overly subjective and vague. As discussed in detail above, defining climate-related risks and quantifying the effect of climate change versus other potential loss causes would be mere guesswork. For property casualty insurers subject to SEC oversight, acute risks are well understood, and the financial statement effects are currently disclosed in the MD&A, financial statements, and financial statement footnotes. For climate-related chronic risks, however, understanding, identifying, and quantifying the effects of such risks would require property casualty insurers to make numerous subjective determinations, with little guidance, as to the existence of a financial impact metric, expenditure metric, the amounts ascribed to such impact or exclusion, and the extent of change from climate change versus other causes. At the same time, registrants acting in good faith in these subjective determinations would be subject to potential litigation regarding the accuracy or completeness of these estimates.

The proposed rule would require registrants to incur significant expenditures – including through internal processes, procedures, and resources as well as externally through the use of auditors and other consultants – in order to prepare the disclosures that we believe would be subjective, unreliable, unverifiable, and immaterial. The proposing release correctly notes that estimates and assumptions are currently required for accounting and financial reporting purposes, but the additional layer of subjectivity inherent in the types of climate-related disclosure required in the

[7] Proposed Rule 210.14-02(c)(4).
[8] Proposing Release, 87 Fed. Reg. at 21,364.
[9] Proposed Rule 210.14-02(b).

proposed rule would further weaken the reliability of the disclosed metrics. For that reason, climate-related financial disclosures made under the proposed rules would result in inconsistent data that will not be comparable, even within the property casualty insurance sector.

The costs to disclose the proposed financial statement metrics far outweigh any theoretical benefits. With the proposed 1% threshold, the cost and effort for a registrant to build and maintain internal support and processes for an auditor's review would not justify any potential benefits of the resulting disclosures. Even if the 1% line-item impact threshold were significantly increased, a fixed numerical threshold divorced from materiality would pose similar issues. If the final rule does require a quantified financial footnote of any scope as contemplated by the proposed rule, registrants should be permitted to present such information on an unaudited basis outside of the financial statements.

The proposal notes that the 1% threshold is intended to provide a bright-line standard, but the 1% threshold is arbitrary and far too low for all registrants. A 1% line-item impact generally is immaterial to the financial statements as a whole and immaterial to the line item itself. In addition, as discussed above, subjective determinations made by a registrant will often dictate the resulting quantitative impacts and expenditures. Instead, the disclosure threshold on a line-item basis should be a minimum of 10% and incorporate qualitative considerations in order to be sufficiently meaningful in identifying material impacts and meet the SEC's goal that registrants provide relevant and decision-useful information. Raising the line-item disclosure threshold to at least 10% would be more meaningful and more closely aligned with the SEC's and the Supreme Court's long-established definition of materiality, and would further the SEC's goal of establishing consistent and comparable disclosures.

Even assuming the identification of climate-related impacts is possible, the only realistic way to quantify whether the impact from an event meets or exceeds the 1% threshold would be to prepare an analysis, most likely a scenario analysis. Under the proposed rule, the details and results of a climate scenario analysis would need to be disclosed regardless of materiality. The proposing release specifically states: "A registrant would also be required to describe any analytical tools, such as scenario analysis, that the registrant uses to assess the impact of climate-related risks on its business and consolidated financial statements, or to support the resilience of its strategy and business model in light of foreseeable climate-related risks."[10] In addition to the significant costs and additional work required to perform scenario analysis and use other analytical tools, the proposed requirement to disclose their analytical tools could force insurers to disclose highly sensitive, proprietary information and thereby influence how insurers conduct their businesses to potentially avoid certain disclosures going forward. For example, to avoid disclosure of their analytical tools, insurers might use generic assumptions to avoid disclosure of proprietary information, stop utilizing certain analytical tools internally, or use a third-party vendor to conduct the analysis.

Liability Safe Harbor

APCIA urges the SEC to strengthen the liability safe harbor before finalizing any of the proposed rules. As proposed, the liability safe harbor applies only to Scope 3 emissions

[10] Proposing Release, 87 Fed. Reg. at 21,356.

disclosures. The proposing release states this safe harbor is needed because of the difficulty registrants will have verifying Scope 3 emissions data as well as the necessity for registrants to rely heavily on estimates and assumptions.[11] As discussed throughout this letter, there are numerous other areas of the proposed rule that would require subjective determinations and estimates. We agree with the commenters referenced in footnote 549 to the proposing release and urge the SEC to consider extending the liability safe harbor to all quantitative climate information to be provided under any final rule.

As discussed in more detail below, we also believe that the safe harbor should apply to disclosures regarding goals and targets. Absent a broadly available liability safe harbor, we believe that registrants could face an onslaught of meritless litigation in connection with their climate-related disclosures.

Greenhouse Gas Emissions Disclosures

Scope 1 and Scope 2

Materiality. The proposed rules would require registrants to disclose Scope 1 and Scope 2 greenhouse gas ("GHG") emissions, regardless of whether the emissions information is material.[12] For insurers, Scope 1 and Scope 2 GHG emissions are often not material under the SEC's longstanding definition of materiality because insurers are not significant emitters of greenhouse gasses in their ordinary course of business. Nonetheless, the proposed rule would disregard registrants' determination of whether GHG emissions data is material to their specific business. With this significant departure from well-settled U.S. securities law, the proposed rule would impose substantial compliance costs and potential liabilities on a large number of public companies for disclosures of Scope 1 and Scope 2 GHG emissions information that is not material and thus not as useful to investors.

Strict Liability. By virtue of applying the proposed rule to registration statements under the Securities Act of 1933 (the "Securities Act") and to periodic reports incorporated by reference into such registration statements, the strict liability regime of the Securities Act would be applicable to the required disclosures under the proposed rule. Applying strict liability to the financial metrics and Scope 1 and Scope 2 GHG emissions data is inappropriate for a number of reasons. For example, climate-related financial metrics, and GHG emissions data in particular, are not captured by the same systems and processes used to report results of operations, financial position, and cash flows in the financial statements and notes to financial statements. Rather, companies' climate-related impact metrics, such as Scope 1 and Scope 2 emissions, are generally provided by third-party firms that specialize in those calculations. While some of these calculations use data (such as Scope 1 GHG emissions from electricity usage) that may be tracked by the registrant, this data is currently not captured within the financial systems that are subject to the registrant's ICFR.

As many of these metrics are not true financial reporting data by their very nature, it is not appropriate to include these metrics as part of the ICFR framework. As such, it is not appropriate to include climate-related metrics in an SEC filing subject to strict liability. Companies and their

[11] Proposing Release, 87 Fed. Reg. at 21,390.
[12] Proposed Rule 229.1504(b).

officers should not be subject to strict liability for unintentional misstatements of climate-related metrics, especially given that they generally rely on third parties for those metrics' accuracy and completeness. For the same reasons discussed above, we believe that registrants should be permitted to furnish, rather than file, Scope 1 and Scope 2 GHG emissions data.

Equity Method Investments. Scope 1 and Scope 2 GHG emissions data should not be required for all equity method investees. The proposed requirement to include Scope 1 and Scope 2 GHG emissions for all equity method investments[13] would be overly burdensome given that, under SEC guidance, registrants must apply the equity method to investments in most limited partnership and alternative investments even though, in many cases, the registrant's interest in those entities is well below 20%.

Under the guidance referred to in ASC 323-30-S99-1, the SEC requires that the equity method of accounting be applied to investments with ownership interests greater than 3-5% in certain partnerships, unincorporated joint ventures, and limited liability companies. The SEC staff has indicated that the equity method is appropriate for these investments unless an investor's interest has virtually no influence over operating and financial policies of the investee, which has been viewed in practice to be less than 3-5%. Since this threshold is so low in practice, many companies with limited partnership, private equity, and joint venture investments use the equity method for all such investments.

Insurance companies typically have a significant portfolio of these types of investments. The vast majority of the investees are funds comprising portfolios of numerous small, private entities that would have an extremely difficult time compiling emissions data, assuming it is even possible. As such, the proposed rule requiring registrants' Scope 1 and Scope 2 GHG emissions disclosure to include those for equity method investees would be unreasonably burdensome and very likely impossible to comply with. Moreover, the process required to compile an estimate of these investees' emissions would necessarily be based on proxy data and would not be representative of emissions within a reporting entity's control.

If the SEC believes emissions of equity method investees must be disclosed, then we believe it is more appropriate to include such disclosures in Scope 3 emissions (where such emissions are required to be disclosed), consistent with existing GHG emissions frameworks. At a minimum, the requirement to report Scope 1 and Scope 2 GHG emissions for equity method investees should be limited to those equity method investees where the registrant exercises significant influence, presumably starting at 20% ownership under the equity method of accounting.

Attestation Requirement. Scope 1 and Scope 2 GHG emissions data should not be subject to any attestation standard. Under the proposed rules regarding attestation for large accelerated filers, Scope 1 and Scope 2 GHG emissions would be subject to limited assurance in the second and third years of disclosure and reasonable assurance in the fourth year of disclosure and thereafter.[14] As many of the allowable methods for estimating GHG emissions are imprecise and no established attestation methodology or credentials currently exist, it would be unreasonable to require attestation for GHG emissions disclosure.

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[13] Proposed Rule 229.1504(b)(2).
[14] Proposed Rule 229.1505(a).

The proposing release states that the attestation standard used must be "publicly available at no cost and have been established by a body or group that has followed due process procedures" and suggests American Institute of Certified Public Accountants' attestation standards as one example.[15] The proposing release also makes it clear that "limited assurance" is akin to a review engagement, and "reasonable assurance" is akin to an audit.[16] But an auditor can only issue an opinion by evaluating a registrant's financial metrics, disclosures, and controls against established criteria. For audits of financial statements, the established criteria are generally accepted auditing principles, and for audits of ICFR, the generally established criterion is the integrated framework issued by the Committee of Sponsoring Organizations of the Treadway Commission.

As an initial matter, there is no principled reason why climate-related disclosures should be subject to attestation and treated any differently than any other required disclosures outside the financial statements in Form 10-K. Whether a disclosure is classified as related to an ESG issue or not – whether it is related to climate or not – the company is responsible for ensuring that its disclosures are accurate in all material respects. An auditor's responsibility does not extend beyond the financial information identified in the auditor's report. There can be, and often is, a significant amount of information, including quantitative information, in a Form 10-K outside the financial statements that does not have audit procedures performed by auditors. There is no reason that GHG emissions data should be treated any differently.

The SEC has relied on management to include materially accurate and complete disclosures in a Form 10-K for many decades, and history has demonstrated that the disclosure controls in place are generally effective. Additional checks and balances include the SEC's comment letter process, enforcement actions, and an active plaintiffs' bar that avails itself of the private right of action under Exchange Act Rule 10b-5. Requiring companies to expend significant resources on attestation to purportedly ensure the reliability of their Form 10-K disclosures simply is not necessary and would be a departure from what the SEC requires for other disclosures.

For climate-related disclosures, reporting standards are not sufficiently developed to establish criteria for measuring GHG emissions or quantifying other financial metrics, such as estimating the extent by which climate change has exacerbated the effect of extreme weather events on various financial statement line items. While the GHG emissions protocols have recommended that companies follow standards of the Partnership for Carbon Accounting Financials ("PCAF") for measuring GHG emissions, those standards do not cover all asset classes, including investments in private equity and limited partnerships for which Scope 1 and Scope 2 GHG emissions disclosure would be required under the proposed rules. Simply put, attestation methodologies with respect to GHG emissions must be allowed time to more fully develop to narrow the potential attestation approaches before an attestation requirement is considered.

The proposal is also unclear as to what types of firms would be qualified to provide attestation. There currently are no uniform and accepted attestation credentials. The language in proposed Regulation S-K Item 1505(b)(1) provides limited guidance as to the qualifications for an expert

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[15] Proposing Release, 87 Fed. Reg. at 21,401.
[16] Proposing Release, 87 Fed. Reg. at 21,392.

in GHG emissions. In other contexts, the SEC provides robust descriptions of expertise. For example, Regulation S-K Item 407(d)(5) explains both the experience of an audit committee financial expert and the manners in which such person could have gained such experience.

The proposed rule would create a cottage industry of existing and new firms, with varying experience and expertise, all claiming to be qualified to provide the required attestation. Absent a list of attestation standards and a description of firm qualifications to provide the required attestation, the proposed attestation requirement likely would not enhance the reliability, comparability, or consistency of disclosures. Instead, the proposal could give a false sense of reliability and comparability for GHG emissions disclosures based on attestation standards that vary among potentially unqualified service providers. If the SEC proceeds with this proposed requirement despite the concerns raised above, there should be a longer phase-in period for obtaining attestation and additional clarifications for attestation qualifications and attestation methodology.

Including attestation of Scope 1 and Scope 2 GHG emissions disclosure in a Form 10-K also would pose significant challenges with timing. Scope 1 and Scope 2 GHG emissions data may not be available until about six months after the calendar year end, but large accelerated filers and accelerated filers, which would be subject to the proposed attestation requirements, must file their Form 10-K by 60 days and 75 days after their fiscal year end, respectively. Thus, for example, it would not be practicable for large accelerated filers and accelerated filers with a December 31 fiscal year end to obtain not only the GHG emissions data but also assurance in time for the filing of the Form 10-K.

In addition, the costs associated with obtaining an attestation will be significant and far outweigh any potential benefit. An attestation is unnecessary and will not be nearly as valuable as an opinion on GAAP financial statements because the GHG emissions reporting standards are not yet sufficiently mature to justify the significant costs associated with an attestation. Companies that have been obtaining third-party verification of GHG emissions data are not necessarily obtaining that verification from an entity that would meet the SEC's proposed independence standards. The number of firms that would meet the proposed independence and qualification standards is expected to be low, and the anticipated demand for attestation services will inevitably require companies to compete for the limited number of qualified external service providers. In light of this increased demand, attestation costs likely would skyrocket.

Scope 3

Disclosures of Scope 3 emissions should not be required in SEC filings. Scope 3 emissions disclosure standards, definitions, and techniques are still evolving. There currently is no consensus on what would be included in the 15 categories of Scope 3 emissions discussed in the GHG Protocol. Without an accepted methodology for calculating Scope 3 emissions, the disclosure to be provided under the proposed rules would not further the goals of providing consistent, comparable, reliable, and decision-useful information to investors as different companies will report based on different inputs and definitions. Moreover, requiring registrants to include in their SEC filings disclosures of third parties, over whom they do not exercise any control, would be inappropriate and unprecedented.

Disclosing Scope 3 emissions presents significant challenges to a property casualty insurance company. The proposed rules would require disclosure of Scope 3 emissions if material to the company or if the company has set a GHG emissions reduction target or goal that includes Scope 3 emissions. Even when insurers believe their Scope 3 emissions are not material, they may still be compelled to measure their Scope 3 emissions to support their materiality determination, and such undertaking alone could require insurers to undergo significant work and expend a significant amount of resources.

Further, there is a statement in the proposing release that "when assessing the materiality of Scope 3 emissions, registrants should consider whether Scope 3 emissions make up a relatively significant portion of their overall GHG emissions."[17] For insurers, which are not heavy emitters, Scope 3 emissions will likely have a "relatively significant" portion of their overall GHG emissions – and likely over 40% in many cases (which is another suggested threshold in the proposing release). But this approach would not assess materiality under the SEC's longstanding definition of the term. If overall GHG emissions are not material to an insurer, the fact that Scope 3 emissions account for a large percentage of those immaterial emissions does not reflect the materiality of Scope 3 emissions to the insurer.

In addition, it is unclear from the proposal whether Scope 3 emissions would include only the 15 categories enumerated in the GHG Protocol or could go beyond them. The plain text of the proposed rule on Scope 3 emissions disclosure does not appear to follow closely the GHG Protocol. The emissions associated with an insurer's underwriting portfolio would not be covered by the GHG Protocol, but the proposed rule is expansively written such that Scope 3 emissions could be deemed to include "insured emissions" as well.

However, there is no existing framework for capturing or apportioning the emissions of significant underwriting activities in an insurer's value chain. Existing guidance was written primarily for industrial companies and does not capture significant activities of property casualty insurance companies. While there have been efforts to capture other activities in the value chain, these have largely focused on investing and lending activities, leaving out other significant activities. Notably, a significant portion of multi-line insurers' underwriting portfolios includes homeowners and personal auto insurance, as well as insurance for small and mid-sized businesses. The emissions data for these sizable portions of insurers' underwriting portfolios is largely unavailable at this time, and there are no well-established methodologies for determining these emissions.

APCIA believes it would be inappropriate to require insurers to disclose Scope 3 emissions associated with their underwriting portfolios. These disclosures would have a disproportionately negative impact on economically vulnerable consumers. For example, disclosures of Scope 3 emissions would effectively penalize insurance companies for providing automobile coverage to drivers or businesses that do not have electric or hybrid cars, which are not yet widely available at an affordable price for many people. Auto insurers would also be penalized for covering people who drive longer distances for work or other obligations, such as in rural areas and cities where reliable public transit may not be available. There are similar concerns for homeowners'

[17] Proposing Release, 87 Fed. Reg. at 21,379.

insurers, for example, because insurance companies do not have control over whether their policyholders can afford the newest and most efficient appliances or fixtures.

Scope 3 emissions should not be imputed to insurance companies because insurers do not have control over the decisions or financial circumstances of their policyholders. In fact, the vast majority of states have anti-rebating laws, which prohibit insurers from providing discounts or inducements that are unrelated to the risk posed by a policyholder. As a result, any inducements to incentivize policyholders to lower their GHG emissions would likely be considered unfair price discrimination under state anti-rebating laws.

To the extent the proposed rule contemplates that insurers include emissions associated with their underwriting activities in their Scope 3 disclosures, it is unclear what level of effort is expected of an insurer in requesting and receiving information from its insureds. An insurer has no right to obtain information from a customer unrelated to underwriting risk under the terms of existing policies, and companies may be limited by insurance regulations as to what can be asked of a potential policyholder in the future. As noted previously, third-party data may be unavailable or, if available, would not be calculated with the rigors applicable to the data compiled by a public company for inclusion in its financial statements. In the proposing release, the SEC acknowledges that registrants will be forced to rely heavily on estimates and assumptions to generate Scope 3 data.[18] Under current Scope 3 guidance, as discussed above, the accuracy of data regarding insureds and investees would be questionable and the reliability and consistency of such data would be nil. Therefore, to the extent that Scope 3 emissions data is collected and this data includes “insured emissions,” it should not be required to be disclosed in registration statements or periodic filings with the SEC. Rather, these disclosures should be voluntary and made outside of SEC filings.

Another significant concern for insurers is the difficulty of avoiding double-counting of Scope 3 emissions. Many insurers deal with business partners in multiple upstream and downstream activities. For example, an insurance company (Company A) may cede or reinsure some of its risks to a reinsurer that is a division of another insurance company (Company B) where both Company A and Company B write or assume risks from the same energy sector company. Company A may provide claim adjudication services that Company B uses to administer its auto insurance claims. Company A may also hold an investment in common equity of Company B within its available-for-sale investment portfolio. With these inter-relationships, it would be difficult to avoid double-counting of GHG emissions. Furthermore, estimating the effect of double-counting is unduly burdensome as it would require a full understanding of the relationships that each third party has with other third parties of the registrant, information the registrant is not privy to. The double-counting could render the disclosure meaningless to investors or potentially misleading.

Apportioning the emissions data of a third-party vendor or customer to a registrant is impractical. We do not believe there are reliable and representationally faithful ways to apportion a vendor’s or customer’s GHG emissions to the amount it contributes to the registrant’s own GHG footprint. Those apportionment methods may produce inconsistent results as they are applied differently by registrants in the same industry. Likewise, many investments held by insurers are not tied to an

[18] Proposing Release, 87 Fed. Reg. at 21,390.

individual company but rather a mutual fund or other investment types; reporting Scope 3 emissions associated with these investments would likely result in incomplete data that is not useful to investors.

In addition, many of the companies in an insurer's value chain are private entities that do not have the wherewithal to compile or estimate GHG emissions data, even when using the EPA's Simplified GHG Emissions Calculator. Small companies just do not have the staff, systems, or other resources to perform the required calculations, and it should not be incumbent upon SEC registrants to force small private entities with which they do business to collect emissions data. Likewise, we believe that the SEC's suggestion that a registrant "seek to reduce the potential impacts on its business of its upstream emissions by choosing to purchase from more GHG emission-efficient suppliers"[19] is inappropriate. SEC disclosure requirements should not be used to direct company decisions regarding which suppliers it works with, particularly in light of the numerous business-relevant factors involved in such decisions. Additionally, this suggestion – like the SEC's Scope 3 emissions disclosure requirement generally – is likely to have the perverse effect of driving business away from smaller and diverse suppliers, which may be less able to absorb the costs of compliance with a rule to which they are not directly subject.

Requiring disclosure of Scope 3 emissions in SEC filings would place insurmountable challenges on insurers without a corresponding benefit to investors or the market. Instead, the Scope 3 emissions disclosures that insurers may provide under the proposed rule would be inconsistent, non-comparable, and unreliable – resulting in information that would not be decision-useful for investors.

Board Oversight Disclosures

The SEC should reconsider the proposal's requirement for companies to identify any directors with expertise in climate-related risks and disclose sufficient detail to fully describe the nature of the expertise.[20] If enacted, these disclosure requirements would likely transform into a *de facto* requirement for registrants to find board members with expertise in climate-related risks because the absence of such board expertise may be misconstrued by the public as a signal that a company does not take climate-related risks seriously. APCIA is concerned that this proposal will make it more difficult for insurers to find directors with expertise in climate-related risks.

If the SEC moves forward with the board oversight disclosures, any final rule should include a safe harbor to clarify that a director identified as having expertise in climate-related risk would not have any increased level of liability under the federal securities laws as a result of such identification. Such a safe harbor would be consistent with the safe harbor afforded to directors identified as audit committee financial experts as well as the proposed safe harbor for directors identified as having expertise in cybersecurity under the SEC's proposed rules for Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure.

Any final rule should also scale back the proposed requirement to describe the processes and frequency by which the board discusses climate-related risks.[21] This requirement is both far-

[19] Proposing Release, 87 Fed. Reg. at 21,377.
[20] Proposed Rule 229.1501(a)(1)(ii).
[21] Proposed Rule 229.1501(a)(1)(iii).

reaching and unprecedented, as companies are not required to provide detailed disclosures describing how many times and for how long other particular topics are discussed.

<u>Goals and Targets</u>

The rules proposed in Regulation S-K Item 1506 regarding targets and goals are not clear about what constitutes setting a goal or target that triggers the disclosure requirement. Some registrants have set internal aspirational goals or targets tracked only internally. Other registrants have set such goals and announced them publicly through a press release or an SEC filing. Still other registrants may have set and communicated goals through other permitted means.

The final rule should clarify that the targets and goals disclosure requirement, if adopted, applies to targets and goals set by the registrant and disclosed in a registrant press release or Securities Exchange Act of 1934 ("Exchange Act") filing, thus providing a bright line for registrants regarding the applicability of the rule to their circumstances. Also, for registrants that set goals or targets prior to the rule's effectiveness, the final rule should recognize that, at any time, the registrant may affirm, or reset as circumstances change, such goals or targets and disclose them in a press release or Exchange Act filing after the final rule becomes effective.

Proposed Item 1506 may be viewed as penalizing registrants that previously set goals or targets and may have a chilling effect on setting goals or targets on a going-forward basis. Permitting affirmation or a reset of such goals or targets would clarify the applicability of the rule, level the playing field among registrants – some of which may have inadvertently opted into a new disclosure requirement – and give registrants with existing goals or targets an opportunity to revisit and, if necessary, reset them in light of the final rule. Permitting all registrants to reconsider their positions is more likely to result in consistent, comparable, reliable, and decision-useful information.

Furthermore, while registrants reasonably will be able to meet the requirements of the forward-looking statement safe harbors pursuant to the Private Securities Litigation Reform Act for goals and targets disclosure, APCIA believes the final rule should specifically provide for a limited safe harbor for disclosures under proposed Item 1506.

<u>Compliance Timeline</u>

To the extent that the proposed rule is adopted as proposed, we strongly urge the SEC to reconsider its stated compliance timeline. Not only do companies need more time to evaluate the proposed extensive and complex disclosure requirements, but the SEC's proposed timeframe to build the systems, processes, and controls necessary to capture and ensure the accuracy of the required metrics and other disclosures is insufficient given the magnitude of the required effort. If the SEC expects registrants to produce accurate and reliable information, registrants must first build the appropriate infrastructure that will include, at a minimum, tasking existing and hiring new employees, designing and testing internal controls, and engaging with auditors and consultants. It will take much longer than the proposed rules contemplate to collect the information and report in SEC filings by the end of 2023 for large accelerated filers and by the end of 2024 for accelerated and non-accelerated filers. And yet, under the illustrative compliance schedule included in the proposing release, large accelerated filers would need to have the requisite systems, processes, and controls in place virtually days or a few weeks following adoption of the final rule.

An additional two-year phase-in period to the proposed compliance schedule would advance the SEC's goals by giving registrants two full fiscal years to build and test their infrastructure and to work with their auditors prior to requiring compliance.

Applicability to Issuers of Insurance Contracts

Some APCIA members also write registered non-variable life insurance products, such as registered index-linked annuities, market value adjustment contracts, contingent deferred annuities, or index-linked universal life policies, that must be registered on Form S-1 or Form S-3. The proposed rule would require climate-related disclosures in registration statements, including on Form S-1 or Form S-3.[22] As a result, an insurer that is not publicly traded would be subject to the proposed rules if the company offers registered life insurance or annuity products.

A privately owned insurance company should not be subject to disclosures intended for public companies merely because it issues registered insurance contracts. The SEC should clarify that the proposed climate disclosures do not apply to private insurance companies by reason of life insurance or annuity filings on Form S-1 or Form S-3. Specifically, the rule should exclude all registration statements for offerings of registered non-variable insurance contracts and all reports filed by insurance companies pursuant to Section 15(d) of the Exchange Act, provided that the insurance company's reporting obligation arises solely from the registration of one or more insurance contract offerings under the Securities Act.

Conclusion

APCIA believes that the current disclosure regime is operating effectively, including with respect to climate-related risks, and that the costs associated with the proposed rules significantly outweigh any potential benefits. To the extent the SEC determines to proceed with the adoption of the proposed rules, APCIA urges the SEC to address the issues discussed above before finalizing any of the proposed rules. Thank you for considering the topics addressed in this letter, and please do not hesitate to contact us if you have any questions.

Sincerely,

Phillip L. Carson
Department Vice President, Financial Regulation
[redacted]

Matthew Vece
Director, Financial & Tax Counsel
[redacted]

[22] Proposing Release, 87 Fed. Reg. at 21,408.