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Le Directeur Général

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
United States of America

June 17th, 2022

File N° S7-10-22
AFEP's comments on the proposed rule on Climate-Related Disclosures for Investors

Dear Madam/Dear Sir,

I am writing on behalf of AFEP, the French Association of Large Companies ("the Association"). AFEP was established 40 years ago and gathers today over 110 large French companies operating worldwide as well as subsidiaries of international groups with strong positions in Europe. AFEP member companies represent on a global scale €2,600 billion turnover and nearly 8 million employees. AFEP is a cross-sectoral association which takes part in the public debate to provide pragmatic solutions to develop a competitive French and European economy. The Association initiates and develops analysis and proposals to contribute to legislative and regulatory work in all areas of importance for our members (taxation, corporate governance, the economy, finances, social protection, labor law, the environment, climate, energy, competition, intellectual property, trade negotiations…) with the direct support of the CEO's and experts from member companies.

Large French companies have been engaged for many years in embedding corporate social responsibility in their strategies. They present a high level of disclosure of non-financial information compared to companies worldwide and have made strong commitments, notably to reduce their greenhouse gases ("GHG") emissions, to respect human rights, to preserve biodiversity and engage in circular economy. The largest public French companies have also committed to comply with the recommendations of the Task Force on Climate-related Financial Disclosures ("TCFD"). In this regard, AFEP member companies insist on the fact that the challenge is not to make finance greener but to bring about a greener economy and that companies lie at the heart of the transition to a low carbon economy. Investors should provide financing resources to support companies in their transition process.

In this context, AFEP is pleased to comment on the proposed rule published by the SEC aimed at enhancing and standardizing climate-related disclosures for investors, considering that some AFEP member companies – although in limited numbers – have the status of Foreign Private Issuer ("FPI") and that the USA have the largest financial markets and the largest investor base in the world. Regulatory developments in the USA can therefore have impacts for companies listed in other jurisdictions even if they are not in the scope of the envisaged regulation.

Equivalence of sustainability reporting initiatives is necessary

AFEP member companies are global when speaking about their markets, shareholders or investors and face increasing pressure from international investors, customers and commercial partners to comply with their demands as regards sustainability reporting. International investors, which represent a significant share of large French public companies' equity, require disclosures established mainly in accordance with the SASB standards or the recommendations of the TCFD. AFEP therefore support the work undertaken by the International Sustainability Standards Board ("ISSB") to establish a global sustainability reporting baseline and consider that on-going initiatives in the field of sustainability reporting and in particular in the field of climate reporting, including the European initiative to adopt European Sustainability Reporting Standards ("ESRS"), should converge with the ISSB's baseline to ensure equivalence of standards.

Addressing the questions raised by the SEC, AFEP respectfully invites the SEC to amend the proposed rule to introduce an equivalence mechanism as envisaged by the European Corporate Sustainability Reporting Directive proposal[1] ("the CSRD proposal") and to grant equivalence to companies that will report under future IFRS Sustainability Standards and/or future EU ESRS: companies reporting under IFRS S2 *Climate-related Disclosures* and ESRS E1 *Climate change* should be deemed compliant with US requirements and should not be required to provide additional information.

AFEP considers that equivalence can be achieved since the proposed rule as well as the ISSB's and EFRAG's climate-related draft standards are based on the recommendations of the TCFD. Furthermore, equivalence is necessary:

- To avoid imposing disproportionate reporting burden on listed companies which cannot comply with 3 different standards, be it on a mandatory or voluntary basis (European, international and US standards).
- To provide investors with relevant and useful data. Investors need comparable, reliable and material data to take an informed decision. Reporting under different standards reflecting different regulatory approaches would not make sense for international investors and would add to the confusion.

Ensuring interoperability with the ESRS and the IFRS Sustainability Standards

AFEP respectfully encourages the SEC to consider the following amendments in order to ensure interoperability with the ESRS and the IFRS Sustainability Standards:

- The proposed rule should require registrants to report on their objectives to contribute to the Paris Agreement Goals. In this view, a strict distinction should be made between their GHG emission reductions within their scope 1, 2 and 3, their avoided emissions and their carbon removals within and outside their value chain.
- Furthermore, the SEC's proposed rule should allow companies using the GHG Protocol to continue.
- The methodology to determine and publish GHG intensity should not be standardized and companies should be allowed to choose to disclose GHG intensity per unit of production or per unit of total revenue.

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[1] Article 2(3) of the CSRD proposal: « The [*European*] Commission shall, in accordance with the procedure referred to in Article 27(2), take the necessary decisions on the equivalence of accounting standards and on the equivalence of sustainability reporting standards as referred to in Article 19b of Directive 2013/34/EU which are used by third-country issuers under the conditions set out in Article 30(3). »

- The use of renewable energy certificate should be encouraged by the SEC as they foster power decarbonization.
- The date of first application of the proposed rule should be postponed by 1 year. For large-accelerated filers, the first publication of climate-related disclosures would therefore take place in 2025 (for fiscal year 2024). As a matter of fact, the CSRD proposal under discussion in the European Union foresees a first publication of sustainability reports in 2025 for fiscal year 2024. Aligning the timelines would allow more time to enable the setting up of reliable GHG emissions reporting, including on significant scope 3 categories, reduce the administrative burden for companies and ensure an effective implementation.
- The level of assurance required for scope 1 and 2 emissions should only be raised, from a limited to a reasonable level of assurance, 3 years after the first application of the proposed rule and provided that an assessment of the implementation of this requirement has been made. The CSRD proposal requires that sustainability reports should include an opinion provided by a third independent party or the statutory auditor with a limited level of assurance. No later than 3 years after entry into application of the Directive, the European Co-legislators are required to assess the opportunity to raise the level of assurance to a reasonable assurance level, provided that an assessment of this provision has been made by the European Commission. We would respectfully recommend the SEC to take into consideration the provisions of the CSRD proposal regarding assurance and to contemplate raising the level of assurance within the same timeline subject to an assessment.

Companies' concern regarding the envisaged financial statements metrics and disclosures

Connectivity between non-financial and financial reporting is still work in progress and at an early stage of realisation although the issue is not new and several initiatives have been taken to enhance connectivity (for instance, the establishment of the IIRC Integrated Reporting Framework). In terms of connectivity, AFEP members' priority is currently to ensure consistency between the assumptions included in the financial statements, the assumptions and scenarios used in sustainability reports and commitments and targets they have made public. This issue was singled out by different authorities in Europe including the European Securities Markets and Authority.

Companies are also currently working on how to improve disclosures in their financial statements on the impacts of sustainability factors, and in particular, climate-related risks where such impacts are material. Better reflecting the actual or potential impacts of climate-related risks is an increasing demand from regulators, shareholders and investors. In this regard the International Accounting Standards Board[2] has released educational material to help companies applying IFRS to meet the expectations of their stakeholders. We consider that this approach is relevant and provide more useful information to stakeholders than requiring *ad hoc* metrics.

Therefore, AFEP does not support the proposed requirement to include in a note to the financial statements, financial metrics on the impacts of physical and transition climate-related risks and expenditure metrics. Companies consider that such requirement:

- Would not meet the expectations of stakeholders and not provide relevant and useful information considering particularly the very low threshold.

[2] « Effects of climate-related matters on financial statements » (November 2020) and « IFRS Standards and climate-related disclosures » (November 2019)

- Would oblige companies to publish non-GAAP measures they do not use in (non-)financial communications, performance monitoring or strategic planning.
- Could increase the complexity of sustainability reporting while reporting frameworks are under construction without enhancing connectivity, which is the ultimate goal.
- Could be very difficult, if not impossible, to implement given the absence of clear definition of the data to be reported and of the processes and methodologies necessary to collect and analyse in such a granular way these data. Companies consider that they will not be able to relate expenses incurred, on a line-by-line basis, to a specific climate-related risk.
- Could finally impose additional burden and costs on companies, since these metrics will have to be integrated into the reporting and internal control processes and audited.

If the requirement to disclose financial and expenditure metrics is maintained, we respectfully invite the SEC to consider requiring disclosure of these metrics in a separate report published outside the financial statements as suggested in questions 88 and 89 of the consultation document. In addition, the SEC could also consider the following amendments to the proposed rule to provide relief to companies and ensure that reported metrics are relevant:

- Establishing a quantitative threshold does not seem appropriate and the materiality threshold of 1%, in particular, is too low. This would result in disclosing information not material to users of financial statements. We would suggest relying on the materiality concept generally used in the establishment of financial statements and the assessment of the reporting company[3].
- Companies should be exempted from the obligation to publish comparative information for the first 2 years of application.
- If segment reporting is required, companies should be allowed to align the segment reporting with sectoral information disclosed in the financial statements in accordance with the applicable GAAP i.e. IFRS 8 *Operating segments* for European listed companies establishing consolidated financial statements.
- Companies should not be required to disclose changes to their cost of capital resulting from climate-related events.

Finally, as regards the requirement to disclose whether financial estimates and assumptions used to produce the consolidated financial statements were impacted by exposures to physical and/or transition risks, we consider that this concern is addressed by the IFRS as mentioned above. Companies establishing their consolidated financial statements in accordance with the IFRS should therefore be exempted from this requirement based either on the aforementioned equivalence mechanism or on the grounds that they provide similar information under the IFRS.

I would like to thank you in advance for the consideration you will give to these comments.

[3] Under US GAAP and as stated by the FASB : « The omission or misstatement of an item in a financial report is material if, in the light of surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced by the inclusion or correction of the item ». Under the IFRS (IAS 1) : « Information is material if omitting, misstating or obscuring it could reasonably be expected to influence decisions that the primary users of general purpose financial statements make on the basis of those financial statements, which provide financial information about a specific reporting entity ».

For further information, do not hesitate to contact Mr Le Quang Tran Van, Director of Financial Affairs ([redacted]), Ms Elisabeth Gambert, Director of CSR and International Affairs ([redacted]) or Mr François-Nicolas Boquet, Director of Environment, Climate and Energy ([redacted]).

Faithfully yours,

Mr François Soulmagnon