State Street Financial Center
One Lincoln Street
Boston, MA 02111-2900

www.statestreet.com
www.ssga.com

June 17, 2022

Ms. Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Submitted via email to: rule-comments@sec.gov

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

Dear Ms. Countryman:

State Street Corporation,[1] including its investment management arm, State Street Global Advisors, (collectively, "State Street") appreciates the opportunity to provide feedback on the proposal issued by the U.S. Securities and Exchange Commission (the "Commission") regarding *The Enhancement and Standardization of Climate-Related Disclosures for Investors*.[2]

For the investors we serve, the measurement and mitigation of climate-related financial risks are key elements in seeking long-term value, and, as a result, we have a long-standing and prominent commitment to voluntary efforts that aim to increase investor-useful information concerning climate-related financial disclosures.

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[1] Headquartered in Boston, Massachusetts, State Street Corporation is a global custodian bank which specializes in the provision of financial services to institutional investor clients. This includes the provision of investment servicing, investment management, data and analytics, and investment research and trading. With $41.72 trillion in assets under custody and/or administration and $4.02 trillion in assets under management as of March 31, 2022, State Street operates in more than 100 markets globally.

*AUM as of March 31, 2022 includes approximately $73 billion of assets with respect to SPDR® products for which State Street Global Advisors Funds Distributors, LLC (SSGA FD) acts solely as the marketing agent. SSGA FD and State Street Global Advisors are affiliated.

[2] https://www.sec.gov/rules/proposed/2022/33-11042.pdf

From our perspective, we urge the Commission to consider the following broad principles for corporate climate-related disclosures:

1) Disclosures should provide meaningful information to investors;
2) The burden of disclosures for issuers, including legal liability, should be minimized where possible, and commensurate with the value provided to investors;
3) Disclosure mandates should recognize the nascent nature of climate risk analytics, and be sufficiently flexible to reflect evolution over time; and
4) U.S. disclosure mandates should facilitate global consistency.

We strongly welcome the Commission taking initiative in this area and leveraging global frameworks such as the Taskforce on Climate-related Financial Disclosures ("TCFD"). Improved climate disclosure will benefit investors that are increasingly integrating climate-related financial risks and opportunities into their investment decisions. Increased standardization will also benefit U.S. companies that are currently navigating a myriad of requirements and expectations from a broad range of stakeholders.

Many companies, including State Street, have been evolving their climate risk data, measurement and disclosure capabilities in line with the TCFD.[3] There is still much work to be done by various actors—including data providers, standard-setters and auditors—in order to achieve comparable and verifiable climate information across sectors and companies. As policymakers, companies, investors and other financial market participants coalesce around the TCFD, it is highly positive that the Commission's proposed climate-related disclosures build off of that framework.

We are, however, concerned that multiple aspects of the Commission's proposal do not reflect the nascent state of climate data, methodologies and reporting capabilities. The TCFD framework, by focusing on key principles, has flexibility that allows for an evolution in climate-related disclosures. This is intended not only to allow for the expected improvements in the quality, consistency and breadth of climate data, methodologies and reporting constructs, but also for the ongoing evolution in the actual guidance issued by the TCFD, which, as already observed, continues to reflect new developments and understandings. The detailed and prescriptive nature of the Commission's proposal at this juncture, coupled with increased costs

[3] State Street's 2021 ESG report, https://www.statestreet.com/ideas/articles/2021-esg-report.html

and potential liability that companies will assume when providing such disclosures, would more than likely constrain, rather than encourage, effective climate disclosures by U.S. registrants now and in the future.

Furthermore, as a technical matter, the Commission should clarify that the proposal would not apply to registered funds -- specifically, exchange-traded funds ("ETFs") registered only under the Securities Act of 1933. Those ETFs cannot register under the Investment Company Act of 1940, simply because the underlying investment is a commodity. It would be more appropriate to consider any ESG disclosures within the context of the separately proposed Commission ESG disclosures,[4] given there are significant similarities in the operations of both ETFs that are registered under the Investment Company Act of 1940 and those that are registered solely under the Securities Act of 1933.

Overall, we strongly support the Commission's goal to improve information flows to investors, and believe this is best achieved by avoiding a level of prescription that could discourage companies' ambition to transition, for example, by setting climate reduction targets or goals. We have therefore identified six key recommendations to facilitate effective climate disclosure, consistent with our letter to the Commission in June of 2021.[5]

Recommendations for Effective Commission Climate Disclosures

I. We agree with TCFD-aligned Scope 1 and Scope 2 emissions disclosure, but Scope 3 disclosures should remain voluntary until important definitional and technical uncertainties are resolved.

We fully agree with the Commission's proposal to require registrants to publish Scope 1 and Scope 2 GHG emissions in line with the TCFD and the GHG Protocol. For investors, these disclosures will be most effective if they enhance and standardize material climate information flows across the investment chain. The Commission should, however, provide greater flexibility with respect to Scope 3 emissions disclosures.

Many aspects of the calculation and attribution of GHG emissions disclosures are in early stages of development, but Scope 3 emissions disclosure remains particularly untested. There

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4 https://www.govinfo.gov/content/pkg/FR-2022-06-17/pdf/2022-11718.pdf

5 https://www.sec.gov/comments/climate-disclosure/cll12-8914407-244702.pdf

continues to be significant practical challenges as a result of absent reliable emissions data and inconsistent methodologies, as well as wider technical issues such as ‘double counting’.

For instance, the GHG Protocol defines Scope 3 emissions, spanning 15 different categories, very broadly – meaning some of these categories will be less relevant to certain companies and/or sectors. Therefore, the Commission should clarify that registrants utilize the existing optionality engrained into the GHG Protocol whereby companies are able to determine the most appropriate disclosure boundary based on their specific businesses.

From a financial services perspective, Category 15 is broadly defined as ‘Investments’ and attempts to capture ‘financed emissions’. To date, disclosure in this regard has been focused on asset classes where methodologies have already been developed, such as equity and corporate debt, with exceptionally limited disclosure on all other asset classes given no (or highly immature) estimation methodologies. Requiring mandatory disclosure for all ‘investments’ prior to establishing robust and consistent methodologies could render Scope 3 emissions data unfit for investment decision-making. Standard-setters such as the GHG Protocol, in conjunction with investors, companies and other actors, should continue work on definitional and technical uncertainties in order to devise appropriate Scope 3 emissions estimation methodologies.

It also should be acknowledged that there will always be an inherent timing lag in the availability of Scope 3 emissions data, even estimated or modeled, given interdependence on Scopes 1 and 2 emissions data. This lag presents a legitimate practical challenge to contemporaneous disclosure of Scope data with Scopes 1 and 2 data with respect to the same period.

In addition to the technical and data challenges described above, we urge the Commission to further consider the context in which Scope 3 data is presented, and the challenges in drawing useful conclusions from the data. For example, the introduction of new liquefied natural gas (“LNG”) facilities by an energy supplier would, by definition, increase the supplier’s Scope 3 emissions. To the extent such action was part of a supplier’s business strategy to transition away from other, more carbon-intensive energy sources, however, the increase in Scope 3 reported emissions would be misleading, if not properly considered.

For these reasons, as we stated in our earlier letter dated June 14, 2021, we urge the Commission to refrain from mandating Scope 3 emissions disclosures, and consult further with a range of constituencies regarding the path forward on Scope 3 GHG reporting.

II. The Commission should allow companies to provide additional climate disclosure outside of financial statements, in a furnished report, and withhold attestation and mandatory assurance, at least until global practices are in place.

The Commission should allow registrants to provide any additional climate disclosures in a furnished, rather than filed, format on a *comply or explain* basis. For instance, the furnished report could address the Commission's proposals on GHG emissions, in addition to transition planning, scenario analysis, carbon pricing, and targets and goals, where relevant and appropriate.

We urge the Commission to adopt a flexible and practical approach to disclosure, recognizing the: (1) nascent technical consensus around climate risk (*i.e.* widely-agreed Scope 3 emissions measurement methodologies); (2) increased cost and potential liability that registrants will assume when providing, in particular, 'forward-looking' disclosure; and (3) benefits of encouraging comprehensive corporate disclosures as soon as possible.

Furthermore, as mentioned in our earlier comment letter, the Commission should ensure a flexible approach to assurance, focused initially on clear disclosure of the level and source of such assurance. For investors, the most relevant information is whether an external review has been attained, not that it is requisite for effective climate disclosure, particularly as there is no clear framework against which auditors can provide such assurance. Similarly, we do not believe attestation is necessary, nor appropriate, at this time, in view of evolving data, methodologies and disclosure capabilities.

III. The 1% materiality threshold is not appropriate and would place an extraordinarily high compliance burden on companies with seemingly no added value/practical use to investors.

We do not agree with the Commission's proposal to require registrants to include quantitative information about climate-related financial risks and climate-related financial metrics in their financial statements. The introduction of any percentage threshold for such disclosure—particularly calibrated at 1%, on a line-by-line basis—would be a huge operational burden given registrants have to monitor and perform the calculation on a quarterly basis. Such a low threshold would be a significant departure from the well-established U.S. GAAP accounting definition of materiality, and also has no premise in TCFD. For investors, this would not produce material information, and likely would be far too granular to inform investment decisions. The significant additional costs and compliance burden posed to registrants would therefore be incurred at limited, if any, value to investors – hence, this aspect of the proposal should be abandoned.

IV. The Commission should only require high-level, qualitative disclosure of the process by which climate-related financial risks are incorporated into governance arrangements and risk management, coordinating with the U.S. banking regulators on scenario analysis.

Although we do agree with higher level, qualitative disclosure that provides investors with a clear narrative as to how registrants are incorporating climate-related financial risks into board governance and risk management, we do not agree with the detailed nature of the Commission's proposal with respect to the governance-related provisions as well as risk management (especially, scenario analysis).

Specifically, the proposed requirement that registrants disclose the climate risk expertise of a designated member of a board of directors is not appropriate. This could imply that boards without directors with such specific expertise are deficient, which we believe is inaccurate. It also suggests that the full board should defer to a single director with respect to the oversight of potential material climate-related financial risks. We believe it is more appropriate to rely on the collective board for this purpose, as with the oversight of other material risks. Investors do not expect companies to focus climate risk expertise within a designated director, as it could impact their ability to identify and appoint directors with other experience. Moreover, existing disclosures already provide investors with sufficient information regarding the collective expertise of a board of directors.

Nevertheless, should the Commission proceed with governance-related provisions in the final rule, we recommend any additional disclosure focus on the board of directors' processes to oversee material climate-related risks.

Furthermore, although we agree that registrants should conduct climate scenario analysis and integrate climate risk into existing risk management processes, imposing prescriptive regulatory requirements at this point does not allow for the developing nature of climate risk management frameworks and scenario analysis and may act as a deterrent to ongoing exploration. The emerging nature of these frameworks and scenarios means such disclosures would not include comparable, verifiable and decision-useful climate information as has been observed in outcomes related to recent regulatory stress-testing exercises. At a minimum, the Commission should ensure full coordination with the U.S. banking regulators, who are developing supervisory expectations for climate-related financial risk management.

V. The Commission should defer implementation by at least 18 months.

While many companies are already providing some of the information that is contained in this proposal, and appreciate the Commission's consideration to phase-in requirements, we urge the Commission to allow sufficient time for registrants to put in place robust infrastructure, including data acquisition, processes and controls, as well as technology. This is essential for effective and reliable climate disclosure that will be of benefit to investors.

VI. The Commission should ensure full policy coordination with both global and domestic policymakers.

Finally, the Commission should prioritize its participation in work to establish a global baseline of corporate climate reporting standards.[6] It is highly encouraging to see that the Commission will accelerate work as part of a new group supporting the International Sustainability Standards Board ("ISSB") on converging similar domestic initiatives. This work is paramount for companies and investors that are operating across borders to ensure an appropriate alignment of regulatory climate disclosure frameworks. The Commission should therefore ensure that the forthcoming ISSB standards are interoperable with U.S. accounting and policy frameworks.

Once again, thank you for providing State Street with the opportunity to comment on this Commission rulemaking on disclosures of climate-related risks by U.S. public companies. Please feel free to contact Joseph Barry at [redacted] should you wish to discuss the contents of this submission in greater detail.

Sincerely,

Richard F. Lacaille
Executive Vice President and
Global Head of ESG
State Street Corporation

Lori Heinel
Executive Vice President and
Global Chief Investment Officer
State Street Global Advisors

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[6] ISSB sub-group to address convergence of domestic initiatives, press release here.