THE HUMANE SOCIETY
OF THE UNITED STATES

June 17, 2022

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

VIA ELECTRONIC MAIL: rule-comments@sec.gov

Re: Comments on Proposed Rule on Climate-Related Disclosures

The Humane Society of the United States ("HSUS"), the nation's largest animal protection organization, submits the following comments in response to the Security and Exchange Commission's ("SEC") request for public input on File Number S7-10-22, The Enhancement and Standardization of Climate-Related Disclosures for Investors ("Proposed Rule"). The HSUS recognizes the comprehensiveness of the Proposed Rule and focuses these comments on (1) scope 3 emissions; (2) attestation requirements; (3) GHG metrics.

I. Interests of the HSUS in Climate-Related Disclosures

For decades, the HSUS has helped companies across industries (e.g., food, pharmaceutical, and clothing) address animal welfare issues that impact, and are impacted by, their businesses. The HSUS is particularly concerned with largescale agribusiness' treatment of farmed animals at breeding and concentrated animal feeding operations ("CAFOs") and the many negative impacts of these practices. The HSUS is also highly concerned with industrialized farming's massive contribution to climate change, which negatively affects the lives of all animals.

The HSUS is a shareholder of many of the largest companies in these industries. Part of our engagement with major corporations has included using, at times extensively, shareholder advocacy processes. Most often, we have used the process to request disclosure on certain risks that companies may fact as a result of animal abuse in their supply chain. Not only is the inhumane treatment of animals itself a material risk to these businesses—as a great many consumers and investors are care deeply about animal welfare issues and seek to buy products aligned with their own values about animal care. Likewise, the treatment of farmed animals has massive impacts on climate change, creating more risks for these companies and their investors.

II. Animal Agriculture is a Major Contributor to Climate Change and Environmental and Public Health Threats

Animal agribusiness represents one of the largest sources of greenhouse gas ("GHG") emissions—releasing 14.5-16.5 percent of all human-produced GHG emissions[1]—and is set

[1] Helen Harwatt, *Including Animal to Plant Protein Shifts in Climate Change Mitigation*

to surpass the oil industry as the biggest GHG-emitter.[2] Agriculture and the timber industry generate significant non-point GHG emissions, primarily through land-use practices and changes to them (e.g., grazing, soil tillage practices, conservation practices, feedlot practices, deforestation, or afforestation).[3] Industrialized animal agriculture is a top methane emitter—a more potent global warming agent than carbon by eighty-six times over a twenty-year timeframe.[4] Should Big Ag continue as it has, predictions are that the industry will take up 81% of the maximum allotted amount of GHG emissions under the Paris Agreement by 2050, leaving little room for other industries to function and still allow us to meet the agreement's goal.[5] This is deeply concerning especially in the context of a United Nations study warning that air pollution related to climate change could cause millions of premature deaths by 2050.[6] A recent study shows that air pollution from factory farms already leads to 17,900 US deaths per year.[7]

These impacts are directly related to how animals are raised in industrialized systems. Factory farming's intensive and cruel confinement is integrally linked with environmental, public health, and climate threats. These confinement practices include restricting breeding pigs in crates and egg-laying hens in cages, overcrowding animals indoors where they live in their own excrement on concrete floors or in urine-soaked debris, and feeding them antibiotics so they can survive in these unnatural environments. At CAFOs, animals are housed by the tens of thousands and add up to nearly 9.5 billion animals raised for slaughter in the US each year.[8] These animals generate billions of gallons of waste and emit millions of metric tons of GHGs. Improving their welfare would go far to abate the [redacted]

Policy: A Proposed Three-Step Strategy, *Climate Policy*, 19:5, 533-541 (November 2018), available https://www.tandfonline.com/doi/full/10.1080/14693062.2018.1528965.

[2] *See How Big Meat and Dairy are Heating Up the Planet*, IATP, GRAIN (July 18, 2018), https://www.iatp.org/emissions-impossible; *see also* Josh Gabbatiss, *Meat and Dairy Companies to Surpass Oil Industry as World's Biggest Polluters, Report Finds*, INDEPENDENT (July 18, 2018), https://tinyurl.com/y8rj78h5.

[3] Task Force on Climate-related Financial Disclosures: Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures, 2021 Annex, https://assets.bbhub.io/company/sites/60/2021/07/2021-TCFD-Implementing_Guidance.pdf

[4] *See* Scot M. Miller et al., *Anthropogenic Emissions of Methane in the United States*, 50 PROC. NAT'L ACAD. SCIS. 20018, 20018 (Dec. 10, 2013); Joseph Romm, *Climate Change: What Everybody Needs to Know* 81 (2016); Marielle Saunois, et al., *The Growing Role of Methane in Anthropogenic Climate Change*, 11 ENVTL. RES. LETTERS 120207 (2016).

[5] *Id.*

[6] *Global Environment Outlook 6* 498, UNITED NATIONS ENVIRONMENT PROGRAMME, (Mar. 4, 2019), https://tinyurl.com/y2f7s84h.

[7] Nina G. G. Domingo et al., *Air quality–related health damages of food*, PROCEEDINGS OF THE NAT'L ACAD. OF SCIENCES, Vol. 118:20 (May 2021), https://www.pnas.org/content/118/20/e2013637118.

[8] National Agric. Statistics Service, Census of Agriculture 2017 Census, USDA, https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_

Investors are trending toward seeking investments in companies that truly prioritize sustainability, climate, and animal welfare disclosures. However, the industry's lack of transparency and accountability perpetuates its risks, especially those related to its contribution to climate change. The Proposed Rule represents part of the solution. Accordingly, the HSUS is encouraged by the SEC's Proposed Rule and offers specific comments below to bolster specific areas of the rule.

III. Scope 3 Reporting

a. Importance of Scope 3 Reporting

The agency should ensure that the disclosure requirements for greenhouse gas emissions, particularly as they relate to Scope 3 emissions, is robust and not diluted when the rule is finalized. Scope 3 often "represents the largest source of emissions for companies. It also presents the most significant opportunities to influence GHG reductions and achieve a variety of GHG-related business objectives…"[9] As Apple stated in its recent comments to the agency, Scope 3 emissions "represent the overwhelming majority of most companies' carbon footprint and are therefore critical to include."[10] They "are essential to understanding the full range of a company's climate impacts."[11]

The urgency of preventing climate change compels compani [redacted] full scope of its climate-impacting emissions. Thus, the agen [redacted] or strengthen all Scope 3 reporting requirements in the final version of the [redacted]

b. Materiality Should be Construed Broadly in Favor of Disclosure

Unlike the mandatory disclosures for Scope 1 and 2 emissions, the Proposed Rule requires disclosure of Scope 3 emissions only if they are material. Materiality is given its traditional definition, turning on whether "there is a substantial likelihood that a reasonable investor would consider them important when making an investment or voting decision."[12] We strongly agree with the agency's recognition of a prophylactic view of materiality such that any doubts as to the critical nature of a company's Scope 3 emissions should be "resolved in favor of those the statute is designed to protect, namely investors."[13] Despite its significant

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[9] Greenhouse Gas Protocol, Scope 3 Frequently Asked Questions, June 2022; https://ghgprotocol.org/sites/default/files/standards_supporting/Scope%203%20Detailed%20FAQ.pdf

[10] Letter from Apple, Inc. re Request for Public Input on Climate Change Disclosures, June 11, 2021, https://www.sec.gov/comments/climate-disclosure/cll12-8915594-244828.pdf.

[11] *Id.*

[12] *See* Proposed Rule, p. 162.

[13] *Id.* (internal quotation marks omitted).

contribution to greenhouse gas emissions, the agriculture industry generally does not disclose anything close to the full scope of its carbon footprint. Thus, at minimum, the agency should not reduce the proposed application or coverage of Scope 3 emissions disclosures and should expressly maintain a strong presumption that Scope 3 disclosures are material unless companies can prove otherwise.

Congress recognized the importance of clear and complete investment information when enacting the federal securities anti-fraud laws, explaining "the hiding and secreting of important information obstructs the operation of the markets as indices of real value."[14] The agency should consider and acknowledge this when construing the reasonable investor and in turn materiality.

Finally, we note that the significance of a company's environmental claims—or a company's environmental silence—is of even greater focus in light of multiple recent Executive Orders relating to the climate "crisis."[15] On March 4, 2021, the SEC announced the creation of a Climate and ESG Enforcement Task Force, expressly recognizing the "increasing investor focus and reliance on climate and ESG-related disclosure and investment."[16] Indeed, the Division of Corporate Finance has repeatedly disagreed with attempts by companies to exclude shareholder proposals that "have focused on a company minimizing or eliminating operations that may adversely affect the environment or the public's health."[17] Thus, as companies increasingly recognize the significance of environmental disclosures to investors, the agency should ensure that such disclosures remain robust and accurate, expressly advising that companies should resolve all doubts concern[redacted] investor (i.e. disclosure).

IV. Strict Attestation Requirements are Essential to Effecting the Rule's Purpose

Section 229.1505 of the Proposed Rule outlines the Attestation requirements of Scope 1 and Scope 2 emissions disclosure. Although the Proposed Rule requires that the attestation provider have significant experience and be capable of exercising "objective and impartial judgment on all issues encompassed within the attestation provider's engagement," it is essential the agency ensure that this independence is actual, unimpaired, and verifiable.

Attestation providers must be competent and transparently independent of their clients. As with SEC Rule 210.2-01 regarding accountants, the rule for attestation providers should be designed to ensure they are "qualified and independent of their … clients both in fact and in appearance."[18] As proposed, the rule does require competence and independence of

[14] H.Rep. No. 1383, 73d Cong., 2d Sess., 11 (1934).
[15] *See, e.g.*, Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, 86 FR 7037, Jan. 20, 2021.
[16] SEC Release, 2021-42.
[17] Staff Legal Bulletin No. 14E (October 27, 2009).
[18] 17 C.F.R. § 210.2–01.

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attestation providers. At minimum, such independence must be maintained to plainly demonstrate the objectivity of attestations. In other words, given the Proposed Rule's similar underlying purposes shared with Rule 210.2-01, the agency should consider bolstering the proposed rule with some of the more detailed requirements of Rule 210.2-01 in order to achieve the confidence-building objective that attestation providers be qualified and independent of their clients "both in fact and in appearance."[19]

Thus, companies should be required to utilize an attestation provider that is *completely* independent, with no current or previous affiliation with the company, such as former employees, those financially interested in the company, or those with any familial connections to the company's executives, management or board members. By requiring companies to find completely independent providers, the rule will ensure the attestation provider is independent both in fact and in appearance. Strong independence requirements will ensure more accurate reporting results, allowing shareholders to better and more comprehensively understand the company's climate risk. Investors without expertise or access to emission-related facts which are often unavailable outside any given company, can be expected to place significant weight on the disclosure attestations. Thus, the competence and independence of attestation providers are critical to preventing greenwashing and to assist investors' understanding of a company's climate impacts.[20]

V. Consistent and Comprehensive GHG Emission Metrics are Necessary to Ensuring Uniform and Clear Disclosures

[redacted]

The Proposed Rule offers comprehensive requirements for GHG emiss[redacted] pricing.[21] The agency's desire that the rule contribute to uniformity and clarity regarding climate disclosures compels requiring the use of such metrics, without reduction or dilution of those in the Proposed Rule. For example, the Proposed Rule would require that companies be consistent and use the same organizational boundaries for emissions "as those included in, and based upon the same set of accounting principles applicable to, the registrant's consolidated financial statements."[22] Moreover, the agency has proposed another consistency requirement that "a registrant must use the same organizational boundaries when calculating its Scope 1 and Scope 2 emissions."[23] Once a registrant determines organizational and operational boundaries, a "registrant must be consistent in its use of those boundaries when calculating its GHG emissions."[24] Consistent boundary requirements ensure consistent GHG reporting and allows investors and shareholders to understand a company's reporting more easily.

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[19] *Id.*

[20] *See, e.g.*, agency discussion of greenwashing on Page 335 of the Proposed Rule.

[21] *See* Section § 229.1504.

[22] Proposed Rule, p. 472.

[23] *Id.*

[24] *Id.*

Additionally, and for similar reasons of uniformity and clarity, the agency should maintain the Proposed Rule's requirement that when registrants disclose emissions, they must exclude the impact of any purchased or generated carbon offsets. Such information is necessary to prevent misunderstanding of the total carbon footprint of a company in a way that simple emissions disclosures (or those with undisclosed offsets) cannot do alone.

Conclusion

The necessity of uniform and comprehensive climate-related disclosures is immediate and immense as we face a truly global crisis. Only with strong, clear, and uniform regulations can investors make responsible and fully informed decisions that will steer their companies toward responsible climate practices. We urge the agency to protect investors by publishing a final rule that incorporates its full range of proposed disclosures, with particular emphasis on those referenced above.

Respectfully submitted,
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