833 Westover Road
Kansas City, Missouri 64113

KEVIN M. CONNOR, ESQ.

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Securities and Exchange Commission
Attn: Ms. Vanessa Countryman, Secretary
100 F Street, NE
Washington, DC 20549

Via SEC internet submission form

Re: File No. S7-10-22

Ladies and Gentlemen:

Climate change is perhaps the most important public policy question of our time, as the SEC's leadership has repeatedly asserted. That said, the SEC's proposed climate disclosures are ill-conceived for the reasons articulated in detail below.

Lack of Materiality. Even though climate change will have both positive and negative impacts on all business, I believe that existing disclosure requirements are more than sufficient to allow companies to disclose the material impacts of climate change to their business. The proposed climate disclosure regulations require disclosure of immaterial information that does not impact true investment decisions in a company. In addition, the proposed rules are ill-defined and too burdensome.

As companies participate in conversations with their current and potential investors, it is a rare occurrence that the portfolio managers or retail stockholders who make the investment decisions to buy a company's stock ever ask about climate change.

Scope 1 & 2 Emissions Are Immaterial to Many Registrants. I believe that investors want companies to light, heat and cool their businesses, to host workers and guests and to furnish energy to operate their equipment and computers and other important systems. I am opposed to the inclusion of Scope 1 and 2 emissions in filed SEC documents as this information is not material to most businesses. Under current disclosure rules, registrants are generally not required to state an immaterial fact in an SEC filing just to demonstrate that the disclosed fact is not material.

Scope 3 Emissions Are Ill-Defined Guesses. Among many other ill-defined aspects of the proposed rule, the sections regarding Scope 3 emissions is particularly vague. The proposed rule requires the disclosure of "total" Scope 3 emissions if material. The term "material" is ill-defined in the proposed regulation. In the classic sense, materiality is determined based upon the financial impact to the registrant. However, Section I(G)(1)(b) of the release turns the term "materiality" on its head by trying to redefine "materiality" to mean a material amount of total emissions (Scopes 1, 2 and 3) rather than a material financial impact. Which definition of "materiality" governs? Under the material amount of emissions definition, most registrants will be forced to calculate Scope 3 emissions even if they do not disclose the number just to determine whether they may be "material" in relation to all emissions. In addition, many registrants will likely disclose Scope 3 emissions even though not financially material to their business to avoid liability for potentially failing to meet this confusing definition. The Commission's commentary in the release regarding materiality is at odds with years of case law and practice. At the very least, this should be clarified in the rule. Ideally, materiality should be determined based upon whether emissions are financially material to the registrant rather than whether the amount of emissions itself is material.

In my view, the requirement to provide Scope 3 emissions will be an unreliable estimation process no matter how accurate a registrant attempts to make its processes to count these emissions. This sort of estimation is not useful to investors and will provide a false sense of accuracy regarding this information. I would urge the SEC not to include Scope 3 reporting in the final rule.

Financial Statement Proposed Rules Require Immaterial Disclosures. The requirements in the proposed rule (proposed Sections 210.14-01 and -02) for a registrant to disclose in its audited financial statements the financial impacts of climate change would require registrants to disclose burdensome, often immaterial information. The implied definition of materiality for this part of the proposed rule is 1% of the line item impact. This is completely contrary to the traditional notion of materiality and will require every registrant to calculate all impacts just to determine whether the 1% rule is met.

Burdensome Costs on Registrants and Investors. Given the complexity of this topic, it is stunning to see the poorly presented cost/benefit analysis in the release. On page 333 of the release, the Commission states "[i]n many cases, however, we are unable to reliably quantify these potential benefits and costs." I think that is an understatement. The Proposal follows the form of the cost-benefit analysis expected of U.S. federal agencies. The substance, however, leaves a great deal to be desired. It can be difficult to predict how a court would assess the validity of the SEC's cost-benefit analysis in the Proposal. But there is ample precedent of courts abrogating the SEC rules for failure to conduct an adequate cost-benefit analysis and there are good reasons to doubt the sufficiency of that appearing in the Proposal. In addition to the large investment funds who are pushing for this regulation, the real winners of the proposed regulation will be the Big 4 accounting firms, law firms and consultants, all of whom are excited at the prospect of earning big fees from registrants.

Refocus on True Materiality. The energy transition is well under way and does not require the proposed regulation to accelerate it. The SEC should not tackle this issue except through the true lens of financial materiality. It certainly should not require Scope 3 (or even Scope 1 or 2) GHG emission disclosures.

The President should tackle climate change goals in the federal government by issuing appropriate executive orders. The analogies to SOX are misplaced. Congress passed, and the President signed into law, the SOX requirements, including the mandate that the SEC pass regulations to implement SOX 404. There has been no such legislation that Congress has passed for the climate change proposed rules.

Providing Ammunition to Activists and the Class Action Securities Bar. The proposed rules, if substantially implemented in the current form, will be a boon to activist investors and to the securities class action bar. This is especially true given that the proposed disclosures will be filed rather than furnished, with all the attendant liability of filed documents. These actors will pick apart the emission estimation process. It is cold comfort indeed that the Commission has offered up the "protections" of the forward-look statement and Scope 3 estimation safe harbors. Activist and plaintiff lawyers will test the safe harbors and test them hard. This will result in increased legal defense costs, again coming out of shareholders' pockets.

Conclusion. Given the immateriality of emissions disclosures and the proposed financial statement changes for many registrants, I would strongly urge the Commission to either not move forward with the proposed rule or to severely limit the required disclosures to a financial materiality standard. At the very least, I would want the Commission to eliminate the Scope 3 emissions disclosure requirements, if not also the Scope 1 and 2 requirements when Scope 1 and 2 emissions are not financially material to a registrant's business. The Commission should not adopt a new "emissions materiality" standard. I would urge the Commission not to pass the new financial statement requirements; rather I would prefer that FASB review what might be required, if anything, under financial materiality standards. I would eliminate the requirement to have emissions data reviewed or audited. Rather issuers should state whether the data is audited or not and by whom. If these items are not eliminated, I would strongly urge the Commission to have these disclosures in separate furnished documents that are not subject to the same liabilities as filed documents.

Again, I appreciate the opportunity to provide my view of the proposed regulation.

Very truly yours,

Kevin M. Connor