June 17, 2022

Via Electronic Mail

The Honorable Gary Gensler, Chair
c/o Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

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

These comments are respectfully submitted to the Securities and Exchange Commission ("Commission" or "SEC") with regards to its proposed rule entitled the *Enhancement and Standardization of Climate-Related Disclosures for Investors ("proposed rule")*.[1] The comments, which express significant concerns regarding the proposed rule, are submitted on behalf of a large, sophisticated, global corporation and a leader in the life sciences industry—a US-listed large accelerated filer— who wishes to remain anonymous (the "Company").

The Company appreciates the Commission's efforts to standardize climate-related disclosures and the opportunity to provide these comments. The Company offers several key points for the Commission to consider as it determines whether to withdraw, amend, or adopt the proposed rule. First, existing rules already cover material climate risks; applying the proposed rule from the SEC would result in an overlap in regulation and unnecessary oversight. Second, the rule as proposed imposes heavier burdens on companies who lead on climate action, while simultaneously discouraging additional businesses from undertaking climate action. Third, the proposed requirements are too overwhelming, requiring companies to disclose granular information like emissions data and governance approaches that could put them at a competitive disadvantage. Finally, the Commission should recognize that the estimated costs of comprehensive compliance are higher than the Commission's estimates, creating an inappropriate additional barrier for regulated companies.

I. Company Background

The Company indisputably regards reporting material climate-related information as a critical obligation in informing the reasonable investor as they approach investment decisions. The Company has demonstrated leadership across its industry on climate reporting and sustainability actions. This is evidenced in the Company's annual sustainability report, which applies aspects

[1] *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, 87 Fed. Reg. 21334 (April 11, 2022). Available at https://www.federalregister.gov/documents/2022/04/11/2022-06342/the-enhancement-and-standardization-of-climate-related-disclosures-for-investors.

of the Global Reporting Initiative ("GRI"), the Sustainability Accounting Standard Board ("SASB"), and the Task Force on Climate-Related Financial Disclosures ("TCFD") indexes.

In addition, the Company has adopted internal rules to enhance self-monitoring of its climate-related goals, as it strives to make continuous progress towards its publically announced environmental and sustainability targets. The Company is committed to participate in the Science Based Targets Initiative ("SBTi"), and is currently in the process of assessing Scope 3 emissions and developing its own targets and related action plans. Finally, the Company releases both an annual greenhouse gas ("GHG") inventory, completed in accordance with the GHG Protocol: A Corporate Accounting and Reporting Standard (Revised Edition) and prepares annual submissions to independent third-party assessors of the Company's sustainability programs.

II. Reasons for Submitting Comments

The Company finds it pertinent to submit public comments to the Commission for three main reasons. The Company believes that responding to the Commission's call for comments is part of its duty as an industry leader, as the Commission seeks to be informed completely of considerations and consequences from a broad array of viewpoints in order to achieve well-designed regulations. The Company seeks to do its part to make the Commission aware of the unintended impacts this proposed rule would have on leading companies who are promoting sustainability measures actively, as the SEC imposes the most significant reporting burdens on companies doing the most to respond to climate change. Third, these disclosure requirements would overwhelm the reasonable investor with vast volumes of granular data that may not be material to the evaluation of a company's operations or financial performance.

III. Comments

a. Existing Rules Already Cover Material Climate Risks

Most notably, the SEC already has rules that cover disclosure of climate change-related information. In 2010 the SEC published its "Guidance Regarding Disclosure Related to Climate Change" (informally, "2010 Guidance"). [2] The 2010 Guidance publication quickly became interpreted as a document created to guide registered companies on applying SEC disclosure requirements to manage climate change concerns. In addition, because of the 2010 Guidance, investors have access to troves of information on leading companies' climate commitments and performance; this information comes from both voluntary disclosure information with reporting standards that the Company accounts for in its annual sustainability report and the external pressures from shareholders demanding transparency and accountability on sustainability issues.

According to the Supreme Court, an item is "material" if there's a substantial likelihood that a reasonable investor would consider it important when determining to buy or sell a security, or how to vote.[3] The Commission, through its proposed disclosure requirements, appears to predetermine the materiality of certain emissions, particularly Scope 3 emissions, potentially

[2] *Commission Guidance Regarding Disclosure Related to Climate Change,* 75 Fed. Reg. 6290 (Feb. 8, 2010). Available at https://www.sec.gov/rules/interp/2010/33-9106.pdf.

[3] *Basic Inc. v. Levinson*, 485 U.S. 224, 108 S. Ct. 978 (1988).

undermining Supreme Court precedent and calling into question SEC's general approach toward determining what information is "material."

In short, the Commission essentially contends its proposed rule is so important that it mandates extreme specificity[4]—and that a reasonable investor would require the same level of detail. Using the proposed rule's requirements for GHG reporting as an example, the Commission asks for intricate details like the location of physical risks down to the zip code and requires continuous updates to existing disclosures, regardless of whether or not those updates would be considered "material" by reasonable investors. This would put an incredible strain on companies' cost and human resources, particularly those companies with large global operations and supply chains, without providing information of benefit to the investor. In this sense, it seems as though the proposed rule dispenses with materiality in some places and distorts it in others. For example, this is particularly acute regarding the treatment of Scope 3 emissions that the Commission states will be material "for many registrants"[5]; it suggests companies err on the side of materiality if in doubt, and if it determines these Scope 3 emissions are not material, the Company needs to explain why.[6]

b. <u>Rule as Drafted Puts Heavier Burdens on Those Who Have Been Leading and Discourages Potential New Entrants from Following Suit</u>

The proposed rule would require granular disclosure of information if certain tools, such as a carbon price or scenario planning, are used by a registrant. In addition to potentially requiring businesses to reveal confidential or sensitive business information, this level of disclosure could result in a chilling, unintended side-effect on the use of planning tools; this ultimately would provide a perverse disincentive to registrants to undertake analyses that might better assist them to evaluate and "describe the resilience of its business strategy in light of potential future changes in climate related risks."[7] This consequence could ultimately prove counterproductive to the SEC's goals of protecting the public interest and investors.

The Company is also concerned that the proposed rule would require disclosure of too much information about business secrets, business plans, and or business internal goals. Under the proposed rule, the more actions a company undertakes to reduce its GHG emissions, set climate targets, or create aggressive offset programs, the more information the SEC requires a business to disclose. Such disclosures may include information that normally would not go into the public domain, potentially having a chilling effect on competition. Some examples might include

[4] Proposed Rule, *supra* note 1. Introducing its proposed rule, the SEC writes, "…investors have increased their demand for more detailed information about the effects of the climate on a registrant's business and for more information about how a registrant has addressed climate-related risks and opportunities when conducting its operations and developing its business strategy and financial plans" (*Id*. at 21337). Further, using the Commission's requirements for Scope 1 and Scope 2 emissions data as an example, the SEC justifies asking Registrants for highly specific information because investors independently look for similar information. As written in the proposed rule, "We propose requiring disclosure of registrants' Scopes 1 and 2 emissions because, as several institutional investor commenters stated, investors need and many investors currently use this information to make investment or voting decisions" (*Id*. at 21376). 4

[5] *Id*. at 21378.

[6] *Id*. at 21379.

[7] *Id*. at 21356.

information regarding how a business uses an internal carbon pricing model to make decisions, or an explanation of the business's transition plans adopted as part of its climate-related risk strategy. Further, the SEC's proposed rule would require a business to disclose relevant metrics, scenario analyses, and assessments of business resilience—all matters that a business may not wish to publicly disclose to its competitors.

As a leading company on climate disclosure, the Company is concerned that the proposed rule could have the unintended consequence of discouraging other companies from setting climate targets or discouraging leading companies from continuing to take on further climate commitments.

c. Proposed Requirements Are Too Granular and Overlap with the Purview of Other Agencies

The Commission's proposal fails to comport with its three-part mission: (1) to protect investors; (2) to maintain fair and orderly and efficient markets; and (3) to facilitate capital formation. The proposed rule instead requires the type of granular emissions data—GHG or otherwise— that traditionally has been the purview of the U.S. Environmental Protection Agency (EPA). The proposed rule requires a high level of technical environmental monitoring and reporting of data.

A reasonable investor would not consider the Commission's required level of granularity necessary; the amount of data the SEC is asking for is technically difficult, costly, and generally overwhelming. Investors have an interest in the Company not expending resources on reporting requirements that do not assist them with investment decisions. Based on experience, the Company has had investors express their preference that it should determine what its material risks are and disclose those material risks accordingly. For example, the proposed rule requires disclosure at a level of specificity beyond what is required even by the EPA's reporting mechanisms. The proposed rule would mandate registrants to disclose GHG intensity per unit of total revenue and per unit of production for the sum of Scope 1 and Scope 2 emissions and, if Scope 3 emissions are disclosed, Scope 3 emissions as well.[8] The proposed rule not only demands the general GHG intensity per unit in the aggregate for Scope 1 and Scope 2 emissions, but also requires public companies to present comprehensive data separately, highlighting the disaggregated emissions of each constituent GHG.[9] Similarly, Scope 3 emissions are required to be categorized by upstream and/or downstream activities and, for each significant category, the emissions must be displayed and analyzed individually.[10]

Other examples of overly detailed disclosure include a company's obligation to disclose information on the environmental attributes it uses to offset a GHG footprint, such as the "costs of offsets."[11] This would be invasive to the extent SEC means to require disclosure of price paid for offsets in over-the-counter transactions and other details on an offset and its source. While the Company appreciates the goals of transparency and accountability for carbon offsets, the

[8] *Id*. at 21469.

[9] *Id*. at 21345.

[10] *Id*.

[11] *Id*. at 21355.

Company believes the combination of standard setting and rating organizations, the Commodity Future Trading Commission, the Federal Trade Commission, and other mechanisms to evaluate disclosures of carbon offsets assure investors are protected and well-informed. Likewise, the SEC calls for details on a business's renewable energy certificates ("RECs") used as part of its plan to achieve climate-related targets;[12] such details include certain information like the amount of generated renewable energy represented by the RECs. Once again, seeking highly granular environmental and energy data is the traditional purview of other state and federal environmental agencies.

The Commission also asks registrants to include a variety of information concerning how a business intends to meet its climate-related targets. These details include specifics such as the scope of activities and emissions included in the target, the defined time horizon by which the target is intended to be achieved, and any interim targets the business believes it will achieve in the process.[13] In addition, the Commission asks for relevant data that indicates whether the registrant is making progress toward meeting its targets, requiring registrants to demonstrate how such progress has been achieved, with updates each fiscal year.

Some of the protocols the SEC proposes for disclosure concern internal carbon price, scenario analysis, business transition plans, and acute details on carbon offset projects or renewable energy certificates. Once again, compiling detailed reporting on these initiatives would be very costly and resource intensive. These activities in and of themselves require huge investments and commitment to undertake properly, and these are resources that would be better directed toward accomplishing the sustainability initiatives rather than focused on real time reporting on progress and of resulting data. In addition, the proposed robust disclosure requirements could result in revealing business sensitive information that gives a company a market advantage, including to its competitors.

d. Estimated Compliance Costs Will Be Much Higher Than SEC Estimates

The Company believes that the cost of the Commission's proposal has been grossly underestimated. Until this proposed rule, most ESG disclosures, including climate-related disclosures, have been entirely voluntary, encouraged by investors for investor-important information. This practice is unlikely to change whether or not the SEC's proposal is adopted as written. However, the SEC's rapid change of taking the U.S. from a system of voluntary disclosure to one of mandatory disclosure in such a tight timeline creates incredible challenges for registrants.

One major difficulty businesses will face is obtaining a better, clear, supportable, and demonstrable understanding of Scope 3 emissions. Scope 3 emissions, defined as the indirect emissions from upstream and downstream activities in a supply chain, will be difficult to assess and require highly technical accounting, science and data skillsets that are in short supply. Auditors and consultants will need to verify the detailed carbon accounting reports in coordination with internal reporting controls to ensure that that data is accurate over time. The

[12] *Id*. at 21406.

[13] *Id*. at 21406.

Company is concerned that even the largest companies are going to have difficulty addressing these internal control matters and financial statements this proposed rule implicates.

The proposed rule would increase dramatically the sheer volume of requests coming from every single entity in the supply chain: the financial service providers, the insurance companies, the vendors, the customers, etc. All public companies would experience simultaneously an unprecedented surge of "paperwork" responding to requested information. Again, this is not a simple switch that can be made quickly or easily.

Finally, it is important to recognize that the unfunded mandates of the proposed rule would not occur in a vacuum. The tremendous compliance costs of the proposed rule would compound the significant challenges that businesses are already facing from historic inflationary pressures, significant reductions in government reimbursement for services, and labor shortages.

IV. Conclusion

Thank you once again for the opportunity to comment on the proposed rule. As the Commission considers next steps regarding its proposal, the Company respectfully requests the Commission to reconsider the extent to which the proposed rule is necessary given existing guidance; to consider how the proposed rule is driving environmental and energy policy within the jurisdiction of other agencies and is straying from the Commission's core mission; to consider the potential unintended consequences of the proposed rule, including discouragement of late adopters from setting science-based climate goals and reporting on progress in a transparent and accountable manner, as well as discouraging leaders from striving toward further climate-related progress; and to consider the significant negative economic impact of the compliance costs that would be imposed by the proposed rule in the midst of major economic headwinds already facing our country.