J. Brendan Herron
Bethesda, Md
[redacted]

June 17, 2022

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

Re: Submission in response to File Number S7-10-22 Enhancement and Standardization of Climate-Related Disclosures for Investors ("Proposed Disclosures")

Dear Ms. Countryman,

Thank you for the SEC's efforts to address climate change, and the opportunity to submit comments. Having spent most of the last two decades focused on solving climate change both as a public company CFO and an investor, in general, I support the goal of enhancing and standardizing climate disclosures. However, I believe that there are several significant changes needed to the Proposed Disclosure for the SEC to achieve the goal of providing material information to allow investors to evaluate a companies' climate risk and their progress in addressing climate change.

My background includes approximately 20 years' experience as a senior executive focused on climate change solutions, including developing the concept for, leading the IPO and serving as the CFO of a climate solutions focused public company. I have engaged with hundreds of investors while raising, and overseen the investment, of several billion dollars in climate solutions. I also serve as an advisor to several climate focused companies. I have extensive hands-on knowledge of climate change, renewable energy and energy efficiency, TCFD implementation, and carbon accounting and carbon credits, as well as public reporting requirements both from the CFO and an investor viewpoint.

My experience has shown that addressing climate change is a journey with companies and investors at various stages along the path and with a high likelihood that along the way, there will be missteps and course corrections. I believe that the innovation and economic impact of addressing climate change will be greater than the impact we have seen over the last 25 years from the internet and that the climate solutions and tools available today are likely still only equivalent to what we saw for the Internet in the late 1990s.

Given the early stage of climate solutions, I believe it is appropriate to encourage disclosure in a way that engages companies to focus on the ultimate goal of reducing carbon and adapting to climate change while not penalizing them for where they are in the journey or for likely course corrections. Accordingly, I have provided five summary recommendations that are intended to allow registrants more "flexibility in making the necessary disclosures while still providing appropriate consistency and comparability"[1]. I have also provided some detailed responses to the various questions in the Proposed Disclosure in an Appendix.

1. **Climate disclosure should be added to and focused in the MD&A section of the 10K**

   The current MD&A requirements (Item 303) requires disclosure of information relevant to a company's financial condition, changes in financial, and results of operations and addresses a number of items material to investors including liquidity and capital resources and was recently reframed by the SEC to be more streamlined and focused on improving the quality of

[1] Proposed Disclosure, pg. 24

information to investors[2]. Given this section is intended to address items material to investors, it would seem appropriate that any climate disclosures, including TCFD disclosures, be included in Item 303 by adding a new section to include risks, organizational structure and the financial impact. Like other material information in the MD&A, management should be able to tailor the disclosure to what is material to the business and investors.

2. **Both the companies and the rules need to have the ability to provide for innovation and improvement**

   It is highly unlikely that the SEC rulemaking process, especially if there is a change in administrations, will be able to keep up with the rapidly changing climate solutions market. While the climate related frameworks may be widely used, they are not mature and may in fact, be misleading or encourage behaviors that actually increases greenhouse gas emissions as discussed below. Many forward-thinking organizations are trying to develop new and improved methods of reporting, or of reducing their greenhouse gas emissions, and the existing frameworks may not allow these practices or not reward the additional effort to implement them.

   For example, as discussed in more detail in Item 5 below, the Greenhouse Gas Protocol ("GHG Protocol"), was last updated in 2015. Since that time, corporate interest in renewable power has grown tremendously and the percentage of renewables on the U.S. electric grid has grown by 50% with approximately 1/5 of our power now coming from renewable sources[3]. Unfortunately, the GHG Protocol has not kept up with the increasing use of, and the sophistication of carbon emissions data available from, renewable power. Thus, by using outdated accounting approaches, organizations may be overstating the actual carbon emissions reductions associated with their renewable purchases.

   As a result, more advanced climate focused corporations, and the federal government, are increasingly adopting more impactful approaches such as Locational Marginal Emissions ("LME"), which measures the emissions impact of each additional megawatt hour of power usage/generation,[4] or strategies for matching renewable power with the time and location of their power usage, a concept referred to as 24x7[5]. These entities will unfortunately find it more difficult and costly to achieve zero carbon goals set or measured under current GHG Protocol accounting methods, despite having actually reduced more emissions than other companies. This will disincentivize innovation and reward lower-impact activities.

   It is important that the rules be written so that companies can innovate and improve both their measurement tools and their approaches without being penalized under a strict rule that rewards the lowest common denominator or exposes the corporation to legal liability for changing its methods or targets.

3. **Disclosure should not be so prescriptive and associated with high levels of legal liability so as to prevent action**

   Having been involved in climate change for approximately 20 years, the sophistication, and the impact of climate change on corporations is still at an early stage and developing. The SEC's

[2] See SEC final rules on MD&A, effective Feb 10, 2021, available at https://www.sec.gov/rules/final/2020/33-10890.pdf for discussion of streamlined and refocused MD&A

[3] Energy Information Administration, Annual U.S. generation by major energy source, updated April 2022 with preliminary data for 2021

[4] LME data accounts for both the location of the power used and the time of day, both of which impact emissions

[5] President Biden's executive order calls for 50% of government power to be locally supplied 24x7 power. See https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/08/fact-sheet-president-biden-signs-executive-order-catalyzing-americas-clean-energy-economy-through-federal-sustainability/

own data that only 31% of 10Ks mentioned a climate related key word is an indication of this[6]. Addressing climate change is a journey and improving climate disclosures is a process. The goal of the Proposed Disclosure should be for companies to inform investors as to the current stage of their journey and how the company plans to improve. Requiring companies to move from no disclosure to zip code level or 1% materiality level disclosures even if phased in over several years, is unlikely to result in useful information to investors while placing high-cost burdens on companies and distracting, or even discouraging, them from actually investing to reduce carbon or lower their climate risk.

While climate is a risk that needs to be addressed, it appears the proposed rules are significantly greater than that required for other material investor considerations such as interest rates, covid, inflation, war, number of users, same store sales, labor shortages, etc. ("Other Material Risks"). For example, a recent Wall Street Journal article[7] described how the stocks of social media companies moved significantly based on quarterly estimates of daily users. It described Meta (formerly Facebook) falling more than 25% in one quarter and then rising by 17% in another quarter based on disclosed active user data. The article goes on to discuss that active users are difficult to estimate for a number of reasons.

As discussed in Item 5 below, it is likely more difficult to estimate carbon and climate risks than social media users. Having prescriptive detailed rules and imposing potential securities liability on companies will likely slow down the pace of progress and make companies less likely to adopt or disclose new practices. This is especially true as the impact of climate change clearly depends on the industry. There does not appear to be a justification for climate related disclosures to have any additional legal liability than any other forward-looking statement and possibly less, as the area of disclosure are so new and rapidly changing.

Given the varying level of sophistication by companies and investors in regard to climate change, there is a high likelihood that along the way, there will be missteps and course corrections. I believe a furnished threshold is appropriate with the potential to reexamine this issue after 5 years of experience. I believe it is rare that companies who file furnished materials, like their earning press release, to be accused of misleading information. Almost all public companies take their public disclosures seriously and thus it is unlikely, using furnished as standard would result is a lower quality of information and may likely increase the level of disclosure. Thus, any use of "filed" should be restricted.

Similarly, the concept of Scope 1 and 2 assurance is a significantly higher requirement than any other financial statement risk and seems unnecessary. The Proposed Disclosure recognizes that attestation is not typically required outside of the financial statements but justifies the attestation requirement because the information is "not derived from the books and records used to generate the audited financial statements.[8]" However, this justification is incorrect as the calculation for Scope 1 and 2 is based on electricity, coal, natural gas or other energy used which is billed, recorded and paid through the accounts payable system, an integral input into the audited financial statements and a focus of any SOX controls. Thus, the only part of the calculation that is not part of the accounting system and SOX controls is the emissions factor that typically comes from a third party (like the EPA), and if locational and usage data is disclosed as potentially required, an investor could easily check the calculation. Even the support for Scope 3 emissions is typically based on items sold or purchases which again are recorded in the accounts payable system.

[6] Proposed Disclosure, pg. 303. Also noting only less than 50% of large accelerated filers mentioned climate keywords in 10K
[7] Social- Media Platforms Lay It On Thick, Laura Forman, Wall Street Journal, May 2, 2022
[8] Proposed Disclosure pg. 220 to 221

If assurance is included in the final rule, it is recommended that the relevant provision not change to require Public Company Accounting Oversight Board registered accounting firms to provide such services. While the firms may be building their capabilities in this area, certain situations may require specialist expertise and that limiting attestation providers only to accounting firms would prevent registrants in such situations from availing themselves of requisite specialist knowledge.

Finally, extending the requirements of these rules to non-consolidated entities (e.g., equity method investments) would extend these rules to numerous private companies. Again, this would seem beyond the scope and would result in an additional cost, difficulty in implementing and legal liability. Such entities could be disclosed in Scope 3 under PCAF if material at the option of the company.

4. **New Audited Financial Statement disclosures are best handled by existing FASB processes**

It would appear that the audited financial statement disclosure requirements are duplicative to current financial statement and MD&A requirements and any changes to accounting standards should be done by the established FASB process, not as part of this process. This is especially true given the level of maturity of climate disclosures and the expected need to continue to update and improve the rules, in a way that is not influenced by politics.

Most, if not all, of these metrics and discussions are best handled as part of Item 303 of Regulation S-K (MD&A) which already requires disclosure of items with material impacts to the results of operations of a registrant and without the detailed prescriptive requirements included in this section. Such change could also require disclosure of write-downs and changes in useful lives based on climate risks, which could also be handled by a point of emphasis by the SEC without extensive new rules.

It is unclear as to why climate should have these additional audited financial statement disclosure requirements that are not in place for the Other Material Risks present today. These other risks, which are often disclosed in MD&A, do not have similar detailed requirements in the audited financial statements.

Further, the 1% threshold is overly prescriptive and is potentially in conflict with other SEC communications, namely Staff Accounting Bulletin Topic 1M – Materiality, which requires that qualitative factors must also be considered in determining whether an item is material.

From my experience in implementing SOX procedures for a newly public company, the audited financial statement proposal would require companies to adopt new SOX procedures that would need to attempt to identify severe weather events and their costs, including at a supplier level. Thus, for example, each severe weather event (which could happen as often as weekly for companies with a national footprint[9]) would have to be identified and the costs associated with it for items like delayed shipments identified throughout the supply chain so that it can be aggregated even if it is below the threshold. It is not clear what would even be considered as many weather events (airlines have weather delays somewhere almost daily) are not necessarily linked to climate change. Similarly, each capital expenditure would have to be evaluated if it was "climate related." It is unlikely that investors would consider any of the examples in the Proposed Disclosure large enough to be material. However, each would require new SOX compliant accounting procedures and systems to calculate and aggregate the costs, assuming

[9] The National Oceanic and Atmospheric Administration identified 20 weather/climate events that had losses exceeding $1 billion in 2021(https://www.ncei noaa.gov/access/billions/), so almost 2 a month, each of which would require procedures to identify the cost throughout the supply chain. With a lower threshold, companies could be trying to identify "severe" weather events on a weekly basis.

companies even have the ability to determine the information suggested from their supply chains. Failure to do so could result in a "material weakness" in the company's internal controls and the potential for financial statement restatements.

If a materiality threshold is used, it should be significantly increased with both a percentage and dollar threshold applied, especially for companies with market capitalizations of less than $10 billion – where individual line items on the financial statements can be relatively small. In addition, any aggregation requirements should allow a company to set a minimum materiality threshold for individual items.

5. **Scope 2 Emissions calculations need to be updated to accurately reflect emissions.**

Unfortunately, the GHG Protocol, as acknowledged by the SEC in the Proposed Disclosures[10], has not kept up with the increasing use of, and the sophistication of carbon emissions data available from, renewable power. The result is that, by using outdated accounting approaches, organizations may be overstating the actual carbon emissions reductions associated with their renewable purchases

Many organizations work to reduce their reported carbon emissions by purchasing zero emission renewable power and the related emissions attributes or certificates (such as Renewable Energy Credits, or "RECs") through the use of power purchase agreements ("PPAs") and continuing to meet their direct electricity needs through grid purchased power. Organizations often focus on the lowest cost solution for RECs, as the present GHG Protocol's market-based calculation gives 100% credit for RECs regardless of where and when the power is generated[11] ("Average Annual Basis"). Thus, a business who consumes electricity in Indiana from 9AM to 5PM can fully offset their reported emissions by buying RECs from a Texas wind farm that mostly produces electricity at night. Unfortunately, while this company is zero carbon on paper, the reality is quite different as the annual emissions associated with the power consumption in Indiana are 80% higher than in Texas. This is due both to the differences in grid generation mix, time of energy delivered and consumed, and location. In addition, a recent study found that using a region's hourly emissions factors instead of annual emissions factors could improve the emission calculation accuracy by up to 35%, especially in grids with a higher penetration of renewables[12].

These outdated rules cause several problems. First, demand for PPAs in low-cost markets like Texas or the Southwest results in too many renewable projects being built in areas where there is limited power demand and transmission infrastructure, which is resulting in increased transmission congestion preventing renewable energy from reaching high emitting regions. This is similar to the situation that might arise if too many houses are built near roads that aren't designed for the volume of traffic. Because of the congestion limitations, in some cases, each incremental renewable plant may be just replacing the output of another renewable plant and not creating any emissions reduction at all. Secondly, next-generation measurement tools aren't adequately handled under GHG Protocol accounting rules. Corporations are increasingly adopting more impactful approaches such as Locational Marginal Emissions ("LME"), which measures the emissions impact of each additional megawatt hour of power usage/generation[13],

[10] "We recognize that the methodologies pertaining to the measurement of GHG emissions, particularly Scope 3 emissions, are evolving. While we expect that many registrants would choose to follow the standards and guidance provided by the GHG Protocol when calculating their GHG emissions, the proposed rules would not require registrants to do so. Allowing for some flexibility in the choice of GHG emissions methodologies would permit registrants to adapt to new approaches, such as those pertaining to their specific industry, as they emerge." (pg. 159 of the Proposed Disclosures)

[11] The GHG Protocol Scope 2 Guidance released in 2015 assumes that the U.S. is one homogenous market for the purposes of renewable energy credits (Pg 65). Thus, renewable power PPAs are treated as reducing overall emissions despite the location even if the power is not consumed by the company.

[12] https://iopscience.iop.org/article/10.1088/1748-9326/ac6147

[13] LME data accounts for both the location of the power used and the time of day, both of which impact emissions

or strategies for matching renewable power with the time and location of their power usage, a concept referred to as 24x7. These entities will unfortunately find it more difficult and costly to achieve zero carbon goals set under current GHG Protocol accounting methods, despite having actually reduced more emissions than other companies. This will disincentivize innovation and reward lower-impact activities.

The proposed rules fail to address the evolving market dynamics and do not distinguish between companies taking full credit for having bought renewables on an Annual Average Basis and those moving past current GHG Protocols and focused on actual emissions reductions through leveraging data and strategies such as LMEs and 24x7 load matching. In addition, the new rules will create legal liability to companies on their GHG accounting statements, and thus companies may find themselves being sued for implementing these new methods intended to reduce more emissions, as they will show lower reported, although mostly likely higher actual, emission reductions.

The path to reduce carbon emissions for a corporation is a journey. The accounting rules by the SEC should be structured to reward those having the most emissions impact using granular data, as well as to encourage those who are just starting out to be as accurate as possible. The specific suggested changes are proposed §229.1500(c)(4)(e) and §229.1506 (d) by adding the underlined language and intended to reflect in the actual rules the flexibility the SEC discussed[14]:

> §229.1500(c)(4)(e): *Emission factor means a multiplication factor allowing actual GHG emissions to be calculated from available activity data or, if no activity data is available, economic data, to derive absolute GHG emissions. <u>Marginal or average emissions factors with higher locational and temporal granularity are preferred and the method of calculation of the emissions factor should be disclosed</u>. Examples of activity data include kilowatt-hours of electricity used, quantity of fuel used, output of a process, hours of operation of equipment, distance travelled, and floor area of a building.*
>
> §229.1506 (d): *If carbon offsets or RECs have been used as part of a registrant's plan to achieve climate-related targets or goals, disclose, <u>for each project</u>, the amount of carbon reduction represented by the offsets <u>or RECS</u>, or the amount of generated renewable energy represented by the RECS, the source of the offsets or RECs, a description and location of the underlying projects generating offsets or RECs, any registries or other authentication of the offsets or RECs, and the cost of the offsets or RECs. <u>Disclosure should be at the maximum temporal granularity possible given available data.</u>*

It is important that the GHG Protocol and the SEC rules encourage accurate reporting on emissions, foster innovation (such as using LME and 24x7 reporting) and encourage transparency in carbon accounting methodology.

I have spent most of the last 20 years focused on addressing climate change and believe that additional climate disclosures are important and thank you for your efforts. My comments are intended to focus the proposal on actionable and meaningful information, informed by both my public CFO and investor experience, while limiting the compliance burden on companies and the risk of legal challenges to the overall rules.

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[14] Allowing for some flexibility in the choice of GHG emissions methodologies would permit registrants to adapt to new approaches, such as those pertaining to their specific industry, as they emerge." (pg. 159 of the Proposed Disclosures)

Attached as an appendix are specific additional answers to questions raised in the Proposed Disclosure. I am happy to answer any questions or provide additional information and can be reached at Herron.brendan@gmail.com.

Thank you for considering my comments.

Brendan Herron

Appendix

Specific Response to Request for Comments

A. Overview of the Climate-Related Disclosure Framework

1. Proposed TCFD-Based Disclosure Framework

2. Location of the Climate-Related Disclosure

Questions 1 to 7

Having been involved in implemented TCFD in SEC documents, agree that it is most effective to create a separate section in the MD&A section of the 10K as discussed above to address the disclosure. Climate risk should be handled like other risk factors (i.e., reported annually with the requirement to update in 10Qs or other regulatory documents for material changes to the information in the 10K). There can be cross references to other sections of the 10k like the risk factors. It is unlikely that more frequent reporting requirements would give investors any new information and would result in longer 10Qs which goes against other efforts to simplify the process.

As explained above and discussed by the SEC in the Proposed Disclosure, it is important that the SEC does not codify rules which are likely to be updated and, in many cases, replaced by better reporting metrics without a mechanism for updating the rules. Even with the FASB, which has a long history of accounting rules, we see constant updates and changes which in some cases, do not achieve the goal of improving investor understanding of the financial statements.

While the climate related frameworks may be widely used, they are not mature and may in fact be misleading or encourage behaviors that actually increase greenhouse gas emissions as discussed in Item 5 of the main response. Many forward-thinking organizations, including the federal government, are trying to develop new and improved methods of reporting or of reducing their use of greenhouse gas emissions and the existing frameworks may not allow these practices or not reward the additional effort to implement them. Any rules based on frameworks shall allow companies the flexibility to implement new release of frameworks as they develop as it is highly unlikely the SEC rule making can keep up with the changing climate solutions market, especially in an area that has been politicized. Additionally, a general framework or the ability to use a framework that has certain minimum requirements and a materiality threshold would be better than selecting a framework that will become outdated or potentially replaced in the future by a better framework.

B. Disclosure of Climate-Related Risks

1. Definition of Climate-Related Risks and Climate-Related Opportunities

2. Proposed Time Horizons and the Materiality Determination

Questions 8 to 18

This proposed disclosure would appear to overlap with the Risk Factors of the 10K and would greatly lengthen the amount of risk factors. Companies should be able to cross reference to Risk factors and possibly include details in a schedule to the 10K. Again, this disclosure should be annual and only updated if material change. Our understanding of climate change is constantly evolving, and companies are at different stages of understanding of climate change. As it may be difficult for companies to fully identify and disclose these risks, especially initially, there should be limits on the liability for failure to identify risk with companies encouraged to update disclosure without legal risk.

Disclosure of the occurrence of a climate related event should only be required if the risk of the event occurring is material and the impact on the physical asset that is exposed to the risk is material to the company. Zip Code level is very detailed for an organization that has many locations, such as a retailer and, may want to consider ability to group by area while disclosing number of assets and dollar amount. For example, for wildfire risk, Northern California, 20 stores with total value of $x. This is especially applicable when one store may not be material, but a group of stores would be. Individual zip codes may be so detailed that it is difficult for investors to use the information.

Flood disclosure should not be required if not a material risk. Should have ability to use FEMA or insurance maps by disclosing how it was determined. Should not try to write in a definition as flood maps will likely change faster than SEC regulations can be updated. Similarly, should only require a water disclosure only if the risk of the event occurring is material and the impact on the physical asset that is exposed to the risk is material to the company.

Companies should have the ability to tailor their disclosure to the individual business in a similar manner to MD&A and not have a prescriptive list of required disclosures. This is especially true on opportunities as companies may for competitive reasons not want to disclose or quantify. Companies already have opportunity to disclose this in the Market Opportunity section of the 10K.

C. Disclosure Regarding Climate-Related Impacts on Strategy, Business Model, and Outlook

1. ***Disclosure of Material Impacts***
2. ***Disclosure of Carbon Offsets or Renewable Energy Credits if Used***
3. ***Disclosure of a Maintained Internal Carbon Price***
4. ***Disclosure of Scenario Analysis, if Used***

Questions 19 to 33

Should only be required if the risk of the event occurring is material and the impact on the physical asset that is exposed to the risk is material to the company. This should be done in an MD&A format on an annual basis. Companies should have the ability to tailor their disclosure to the individual business or industry in a similar manner to MD&A and not have a prescriptive list of required disclosures. Green bonds already have required disclosures. Should have option but not requirement to include these disclosures with other disclosures for this section.

Carbon offset and Recs should be required to be disclosed. The type and location of offset or Rec should be disclosed. Not all carbon credits or Recs are the same and there is a fundamental conflict between low cost and climate benefit[15]. It is unlikely that the lowest cost carbon credit or rec has the same climate benefit as a more expensive one and without a way to differentiate between the two, many organizations will choose the lowest cost. For example, according to the Financial Times, in 2018, there was over 130 times higher cost between the highest cost and lowest cost carbon credit depending on the verification method (which is an indication of climate benefit)[16].

It would appear that requiring extensive disclosures on the internal price of carbon would discourage companies from implementing a price on carbon, especially if the price of carbon had a competitive advantage or disadvantage or gave rise to the potential for legal liability. There are numerous examples of internal calculations and estimates which are not required to be disclosed

[15] For a good summary of the issues with carbon credits, see 15 Lessons from 30 Years of Voluntary Carbon Markets by Mark Trexler, December 15, 2020, accessed at https://www.ecosystemmarketplace.com/articles/opinion15-lessons-from-30-years-of-voluntary-carbon-markets/

[16] Carbon offset market progresses during coronavirus, Anna Gross, Financial Times, September 28, 2020

(for example, interest rates, growth projections, pricing projections), all of which would likely have a greater impact on a corporation than an internal price of carbon. It would seem hard to justify why a projected price on carbon is more material than these other calculations and estimates.

Similar to the internal price on carbon, scenario analysis is not required for other internal calculations and estimates, many of which have a more material impact on the corporation and investors than climate-related risks.

Physical asset risk should only be required if the risk of the event occurring is material and the impact on the physical asset that is exposed to the risk is material to the company. This should be done in an MD&A format on an annual basis. Companies should have the ability to tailor their disclosure to the individual business in a similar manner to MD&A and not have a prescriptive list of required disclosures.

Having been involved in climate change for approximately 20 years, in many cases, a corporation's sophistication and understanding of climate change is still at an early stage and developing. Addressing climate change is a journey. Imposing potential securities liability on companies will likely slow down the pace of progress and make companies less likely to adopt or disclose new practices. There does not appear to be a justification for climate related disclosures to have any additional legal liability than any other forward-looking statement and possibly less, as the area of disclosure are so new and rapidly changing. By requiring the disclosures in the 10K, there is an associated liability, and it appears to be rare that companies make fraudulent or misleading statements in their 10Ks or even "furnished" documents.

D. Governance Disclosure

1. ***Board Oversight***
2. ***Management Oversight***

Questions 42 to 51

These proposals all seem reasonable and should be implemented to raise climate risk awareness. Compensation linkages, if material, should be disclosed but can be in context of the current executive compensation disclosures.

E. Risk Management Disclosure

1. ***Disclosure of Processes for Identifying, Assessing, and Managing Climate Related Risks***
2. ***Transition Plan Disclosure***

Questions 42 to 51

These proposals all seem to be reasonable items for a company to consider for disclosure to raise climate risk awareness. However, companies should have the ability to tailor their disclosure to the individual business in a similar manner to other areas of the MD&A and not have a prescriptive list of required disclosures. Thus, it is recommended the current list of risks to be considered should be evaluated in light of the business and the potential materiality instead of each item being a required disclosure. The goal should be to increase overall disclosure but the risk of being overly prescriptive means companies may be discouraged from trying to address climate change for fear of being sued.

If the SEC requires a registrant to provide data that indicates whether the registrant is making progress toward meeting the target and how much progress has been achieved, it should allow a phase-in period to accommodate the registrant's process in the development and implementation of its target or goal. For example, a company may commit to a renewable energy goal before understanding the renewable energy offtake structures suitable for its business. A company may have a small energy footprint and may not have the demand or expertise suitable to lock in a long-term power purchase agreement ("PPA") for a utility-scale energy project. Requiring data on progress against renewable energy targets from the first two years of a target or goal's adoption could have a chilling effect on companies considering renewable energy as a strategic, long-term business decision and/or as part of their climate transition plans.

It is especially important to not increase the level of legal risk for transition plans which are likely to change as the climate solution market develops and companies become more sophisticated in understanding of how to address climate risks. Again, the goal is for companies to make (and communicate to investors) the most progress possible and to adopt increasingly sophisticated and more effective methods without concern about legal liability from changing past disclosures.

F. Financial Statement Metrics

1. ***Overview***
2. ***Financial Impact Metrics***
3. ***Expenditure Metrics***
4. ***Financial Estimates and Assumptions***

Questions 52 to 92

See Item 4 - *New Audited Financial Statement disclosures are best handled by existing FASB processes* in the main response.

G. GHG Emissions Metric Disclosure

1. ***GHG Emissions Metric Disclosure Requirement***

Questions 93 to 114

In general, I support disclosure of a metric similar to Scope 1, 2 and 3 if the numbers are material. I believe that investors will find it useful provided they have disclosure on the methodology and also the details of any renewable power credits or offsets including the verification method, location and time period associated with the rec or offset. See Item 5 - *Scope 2 Emissions calculations need to be updated to accurately reflect emissions* in main response for additional details and proposed language.

I believe that the any GHG emissions should be calculated on a CO_2 equivalent basis as that is the normal standard and to the extent an individual gas, such as methane is involved, the CO_2 equivalent would account for it being a more potent gas. For most companies, other than possibly the oil and gas and the livestock industries, there would appear to be limited value in detailed emission calculation by type of gas as the emissions and the mix is driven by largely by power purchases[17] where the generation emissions mix is not in the control of the company and unlikely to provide material information to the investors.

Each Scope should be separately disclosed with Scope 3 optional (although possibly an item that shareholders could vote on). It is important to note that Scope 3 is difficult to calculate, and flexibility should be provided if not material and ranges of disclosures should be allowed. Companies setting targets should, at a minimum, disclose how they determined the target and how they plan to track it but should not be required to immediately report Scope 3 emissions. An

[17] Scope 2 emissions are one of the largest sources of GHG emissions globally accounting for 1/3 of overall emissions per the GHG Protocol Scope 2 Guidance pg. 6

immediate requirement to disclose Scope 3 would likely prevent companies from setting targets which seems counterproductive. Companies should also clearly address what categories of Scope 3 have been considered and not considered as not all categories are material to all companies.[18]

The use of Recs and offsets should be disclosed. This should include the location and time period of the Rec especially if not in the same energy market (i.e., PJM or Ercot) and time period of the company's power usage should also be disclosed. It is not necessary to go down to the zip code level but can be disclose at state or power market level. The use of PPA related recs (for scope 2) with proposed language is addressed in Item 5 - *Scope 2 Emissions calculations need to be updated to accurately reflect emissions*. The use of carbon offsets should be disclosed by amount, verification method, how credit was created (i.e., timber, carbon capture, etc.), time period, cost per ton offset and location.

If implemented as discussed, the Scope 1,2 and 3 would be included in the 10K. It should be acceptable for the time period of the scope to be on a one quarter lag (i.e., October to September for a calendar period filer) or even a two-quarter lag. Any potential material difference from such lag (e.g., from an acquisition) should be disclosed and included in the following years calculation. Otherwise, it is unlikely the lag is material and reconciliations should not be required.

GHG intensity should be optional as different companies and investors may choose to measure it over different metrics (i.e., stores, vehicles produced, miles flown, etc.). Standard measurements such as over revenues or assets are easily calculated and thus the disclosure requirements seem redundant.

At implementation, historical GHG disclosures should be optional as it may be difficult to determine GHG disclosures for historical periods. Once disclosed, historical measures can be disclosed at a summary level with any changes in methodology noted. As calculation methods may change, it may not be practical to update historical calculations for methodology changes.

2. *GHG Emissions Methodology and Related Instructions*

Questions 115 to 132

See responses to Questions 93 to 114 and Item 5 - *Scope 2 Emissions calculations need to be updated to accurately reflect emissions* for a discussion on methodology, time periods, historical periods and emission factors.

Companies should have the option to limit organizational boundaries to consolidated entities, which by GAAP accounting definition, indicate control. Non consolidate entities (including equity method investments), by contrast, are not controlled and thus should not be required to be included in the organizational boundary. Non-consolidated entities typically include many private companies who are not subject to these rules. Extending the requirements of these rules to non-consolidated entities (e.g., equity method investments) would extend these rules to numerous private companies. This would seem beyond the scope and would result in an additional cost, difficulty in implementing and legal liability. There should be no requirement to reconcile this as equity method investments are typically clearly disclosed. Such entities could be disclosed in Scope 3 under PCAF if material at the option of the company. Also see questions 135 to 167 for a conflict between this proposal on equity method investments and the justification of the proposed assurance process.

Again, it is important to emphasize that the disclosure needs to be flexible, and companies allowed to phase in parts as they become more sophisticated. Additionally, all disclosure should have

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[18] See https://ghgprotocol.org/scope-3-technical-calculation-guidance#supporting-documents for examples of listing of categories which appear to largely line up with the SEC proposal

material thresholds which does not appear to be the case in the Proposed disclosure. The worse possible result is companies spend significant amounts of time and money on required prescriptive details and choose not to address climate change.

3. The Scope 3 Emissions Disclosure Safe Harbor and Other Accommodations Questions 133 to 134

The proposed Scope 3 emissions safe harbor should apply to Scope 1 and 2 emissions as well as many of the other disclosures and is the correct standard. It appears the SEC does not recognize the uncertainty and margin of error for Scope 1 and 2 emissions. Strictly liability will limit companies from any optional disclosure and from making improvements.

As discussed in Item 3 - *Disclosure should not be so prescriptive and associated with high levels of legal liability so as to prevent action, a*ddressing climate change is a journey and improving climate disclosures is a process. The disclosures should allow organizations to reflect and communicate where they are in the journey. Requiring companies to move from no disclosure to zip code level or 1% materiality level disclosures even if phased in over several years, is unlikely to result in significant useful information to investors while placing high-cost burdens on companies and distracting them from actually investing to reduce carbon or lower their climate risk.

For example, as discussed in Item 5 - *Scope 2 Emissions calculations need to be updated to accurately reflect emissions,* use of the generally accepted Scope 2 calculations methods could result in a misstatement in emissions of up to 80%. Strict liability should not be imposed for working to implement improved methods (or for using the current method, if that is the company's level of sophistication).

Any increase in liability should be part of a separate rule making process after, at a minimum, a five-year period. SRC, ECGs and new IPOs should be exempt from all of the disclosure requirements, not just Scope 3. Otherwise, it will stop capital formation as private companies looking to go public will be delayed while trying to implement all the rules.

H. Attestation of Scope 1 and Scope 2 Emission Disclosure

1. Overview

2. GHG Emission Attestation Provider Requirements

3. GHG Emissions Attestation Engagement and Report Requirements

4. Additional Disclosure by the Registrant

5. Disclosure of Voluntary Attestation

Questions 135 to 167

No, an attestation report should not be required for Scope 1, 2 or 3 but could be optionally provided by the company.

The Proposed Disclosure recognizes that attestation is not typically required outside of the financial statements but justifies the attestation requirement because the information is "not derived from the books and records used to generate the audited financial statements.[19]" <u>However, this justification is incorrect as the calculation for Scope 1 and 2 is based on electricity, coal, natural gas or other energy used which is billed, recorded and paid through the accounts payable system used for the audited financial statements (and with the same organizational boundaries as any consolidated entity).</u> <u>Thus, the only part of the calculation that is not part of the accounting system and SOX controls is the emissions factor that typically comes from a third party (like the EPA), and if</u>

[19] Proposed Disclosure pg. 220 to 221 – underlining added for emphasis

locational and usage data is disclosed as potentially required, an investor could easily check the calculation. Even the support for Scope 3 emissions, which is typically based on items sold or purchases, are derived from the financial statements. Thus, any additional attestation report or a separate controls assessment by management is unnecessary and also doesn't appear to be based on any materiality consideration.

The concept of Scope 1 and 2 assurance and a separate controls assessment by management is a significantly higher requirement than any other non-financial statement data and does not appear to be warranted as such a significant requirement is not proposed on any other type of financial information and there appears to be no consideration for the materiality of the information. For example, as discussed in Item 3 - *Disclosure should not be so prescriptive and associated with high levels of legal liability so as to prevent action*, social media users are not derived from the financial statements (as the financial statements are typically based on add revenue, not user revenue) and are not required to have a separate attestation or controls report. The risk of such an assessment requirement is that the entire Proposed Disclosure is successfully challenged in court for an unnecessary component.

If the information is disclosed in the MD&A, it is subject to the legal standard as all other non-financial statement information in the 10K. Scope information should not be in the audited financial statements as there is no evidence it is more important to investors than Other Material Risks.

The Proposed Disclosure also seems to assume a level of accuracy for scope 1 and 2 emissions that does not exist. While the Proposed Disclosures spend several pages (28 to 33) discussing the various frameworks like TCFD, it appears that a similar analysis of effectiveness of the Greenhouse Gas Protocol ("GHG Protocol") was not conducted instead relying on several letters and reports including one from the protocol itself (see ft 97). Thus, there is no evaluation of the accuracy of the GHG Protocol which was developed in 2015 and for which there are numerous efforts to update or replace due to inaccuracy and double counting. As noted in Item 5 - *Scope 2 Emissions calculations need to be updated to accurately reflect emissions,* use of the generally accepted Scope 2 calculations methods could result in a misstatement in emissions of up to 80%. Attestation of an outdated methodology does not improve accuracy or investor information and may actually be misleading. It is important that any attestation standard does not limit the methodology to the lowest common denominator but allows companies to implement more accurate approaches.

It should also be noted that on pg. 228, the assurance requirement discusses only requiring assurance over activities controlled by the registrant. However, this appears to conflict with the requirements in G.2. *GHG Emissions Methodology and Related Instructions,* where the proposed disclosure includes equity method investments which by definition are not controlled. (See answers to questions 115 to 132).

If assurance is included in the final rule, it should only be required when the Scope 1, 2 or 3 emissions are material. In addition, it is recommended that the relevant provision not change to require Public Company Accounting Oversight Board registered accounting firms to provide such services. While the firms may be building their capabilities in this area, we believe certain situations may require specialist expertise and that limiting attestation providers only to accounting firms would prevent registrants in such situations from availing themselves of requisite specialist knowledge. In addition, to the extent the data is required in registration statements, the firms should not be subject to additional liability.

Companies should be able to voluntarily disclose any attestation reports with reasonable disclosure about the nature of the report as proposed on pg. 263.

I. Targets and Goals Disclosure
Questions 168 to 174

These proposals all seem to be reasonable items for a company to disclose targets and goals and should serve to raise climate awareness and should be part of the MD&A disclosure on climate. However, companies should have the ability to tailor their disclosure to the individual business in a similar manner to other areas of the MD&A and not have a prescriptive list of required disclosures. Thus, it is recommended that there not be specific goals or targets required to be set as the goals and targets should be evaluated in light of the business and the potential materiality instead of each item being a required disclosure.

The rules should also recognize that climate change is an emerging area of expertise and that companies are at varying stages of preparedness. As proposed, disclosures should include information about action plans and timelines for achieving targets. However, if the SEC requires a registrant to provide data that indicates whether the registrant is making progress toward meeting the target and how much progress has been achieved, it should allow a phase-in period to accommodate the registrant's process in the development and implementation of its target or goal. For example, a company may commit to a renewable energy goal before understanding the renewable energy offtake structures suitable for its business. A company may have a small energy footprint and may not have the demand or expertise suitable to lock in a long-term power purchase agreement ("PPA") for a utility-scale energy project. Requiring data on progress against renewable energy targets from the first two years of a target or goal's adoption could have a chilling effect on companies considering renewable energy as a strategic, long-term business decision and/or as part of their climate transition plans. In addition, as companies become more sophisticated in their understanding of climate change, their approach, goals, and estimation and measurement tools will likely change. Companies should be encouraged to make the most progress possible and to adopt increasingly sophisticated and more effective methods without concern about legal liability from changing past disclosures.

As the SEC recognizes on pg. 270 of the Proposed Disclosure[20], the goal should be to increase overall disclosure but the risk of being overall prescriptive means companies may be discouraged from trying to address climate change for fear of being sued. For example, SEC recognizes where a "company has set a goal or target does not mean that it has a specific plan for how it will achieve those goals. What is important is that investors be informed of a registrant's plans and progress wherever it is in the process of developing and implementing its plan." However, it is not clear this concept has been addressed in the rules themselves where for example, §229.1506 (c) which still requires an annual update on data on progress to the target.

Similarly, the SEC on pg. 270 also recognizes that "A registrant's disclosure of its climate-related targets or goals should not be construed to be promises or guarantees. To the extent that information regarding a registrant's climate-related targets or goals would constitute forward-looking statements, which we would expect, for example, with respect to how a registrant intends to achieve its climate-related targets or goals and expected progress regarding those targets and goals, the PSLRA safe harbors would apply to such statements, assuming all other statutory requirements for those safe harbors are satisfied". However, again this concept does not appear in §229.1506 and as this is an emerging area, consider a lower legal threshold to encourage setting targets.

[20] See pg. 270 of Proposed Disclosure where SEC recognizes both the nature of targets, the need to phase in reporting and the need to limit liability.

As discussed in the answer to questions 19 to 33, there should be specific disclosure around the use and type of carbon credits as there is a wide variation in quality and cost.

J. Registrants Subject to the Climate- Related Disclosure Rules and Affected Forms
Questions 175 to 189

SRC, ECGs and new IPOs should be exempt from all of the disclosure requirements, not just Scope 3. Otherwise, it will stop capital formation as private companies looking to go public will be delayed while trying to implement all the rules. In addition, it should not be required on S-8s, filings in connection with merger or asset backed security transactions. Foreign filers who are subject to the EU or other similar rules should be able to follow those requirements by filing English versions and not recreating new disclosure although they should disclose they have taken advantage of this rule. A mutual recognition system would be helpful to encourage global capital flows.

It makes sense to require updates in the 10Q for material changes similar to updates to risk factors.

K. Structured Data Requirements
Questions 190 to 193

Climate related data should be in the MD&A section and not be subject to any additional XBRL requirements.

L. Treatment for Purposes of Securities Act and Exchange Act
Questions 194 to 196

As discussed throughout this document including in Item 3 *Disclosure should not be so prescriptive and associated with high levels of legal liability so as to prevent action* and in response to Questions 168 to 174, and as noted by the commentary on pg. 287 of the Proposed Disclosure, the risk of high legal liability will result in disclosure "in the manner most limited to meet the specific requirement and avoid more robust explanation" which seems to undermine the entire objective of the Proposed Disclosure.

My experience has shown that addressing climate change is a journey with companies and investors at various stages along the path and with a high likelihood that along the way, there will be missteps and course corrections. I believe a furnished threshold is appropriate with the potential to reexamine this issue after 5 years of experience. I believe it is rare that companies who file furnished materials, like their earning press release, to be accused of mistaking information. Almost all companies take their public disclosures seriously and thus it is unlikely, using furnished as standard would result is a lower quality of information and may likely increase the level of disclosure. Thus, any use of "filed" should be limited.

L. Compliance Data
Questions 197 to 201

I support a phase in by both type of filer, by requirement and by legal liability. From my experience, in implementing climate disclosures, we first phased in the risks, governance and strategy, followed by TCFD disclosure and then other disclosures. This allowed an internal process and sophistication to develop or be improved. In each case, during the phase in period, the disclosure improved for both the new items and the items already phased in.

It is important that these rules do not limit capital formation, acquisitions or newly public companies.