June 17, 2022

Via Electronic Submission

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

Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors (SEC Rel. Nos. 33–11042; 34–94478; File No. S7–10–22)

Dear Ms. Countryman:

The Investment Adviser Association[1] (**IAA**) appreciates the opportunity to comment on the Commission's recent proposal to require registrants[2] to provide certain climate-related information in their registration statements and annual reports, including certain information about climate-related financial risks and climate-related financial metrics in their financial statements (**Proposal**).[3] Our comments in response to the Proposal build on the views expressed in our June 11, 2021, letter to Commission Chair Gary Gensler and Commissioner Allison Herren Lee in response to Commissioner Lee's March 15, 2021 request, *Public Input Welcomed on Climate Change Disclosures*.[4]

---

[1] The IAA is the leading organization dedicated to advancing the interests of investment advisers. For more than 80 years, the IAA has been advocating for advisers before Congress and U.S. and global regulators, promoting best practices and providing education and resources to empower advisers to effectively serve their clients, the capital markets, and the U.S. economy. The IAA's member firms manage more than $35 trillion in assets for a wide variety of individual and institutional clients, including pension plans, trusts, mutual funds, private funds, endowments, foundations, and corporations. For more information, please visit www.investmentadviser.org.

[2] We use "registrants" to refer to U.S. corporate issuers that are registered with the Commission under Section 12 of the Securities Exchange Act of 1934 (**Exchange Act**) and Section 5 of the Securities Act of 1933 (**Securities Act**) as well as foreign private issuers.

[3] *The Enhancement and Standardization of Climate-Related Disclosures for Investors,* 87 Fed. Reg. 21334 (Apr. 11, 2022), available at https://www.govinfo.gov/content/pkg/Fed. Reg.-2022-04-11/pdf/2022-06342.pdf. The proposed amendments would require U.S. registrants filing registration statements on Forms S–1, S–4, and S–11 under the Securities Act to include the climate-related disclosures required under proposed subpart 1500 of Regulation S–K and proposed Article 14 of Regulation S–X. The proposed amendments would also require foreign private issuers to include the proposed climate-related disclosures when filing Securities Act registration statements on Forms F–1 and F–4. The proposed amendments would further require U.S. registrants and foreign private issuers to include the proposed climate-related disclosures in their Exchange Act annual reports filed, respectively, on Forms 10–K and 20–F and in Exchange Act registration statements filed, respectively, on Forms 10 and 20–F.

[4] *Public Input Welcomed on Climate Change Disclosures*, then-Acting Chair Allison Herren Lee (Mar. 15, 2021),

The IAA commends the Commission for and is generally supportive of its thoughtful Proposal. We agree with the Commission that mandatory baseline disclosure of information about climate-related financial risks and climate-related financial metrics can provide consistent, comparable, and reliable – and therefore decision-useful – information to investors and investment advisers to enable them to make informed judgments about the impact of climate-related risks on current and potential investments.

An increasing number of investment advisers engage in sustainable investment strategies on behalf of their clients and consider environmental, social, and governance (**ESG**) factors individually and collectively as an integral part of prudent investment and risk management processes, both as a way to maximize return for their clients over the long term, and to respond to increased investor interest in this area. Many investors are looking to advance their values and goals on issues such as sustainability and human capital through their investment portfolios. Climate-related disclosures can reveal material information necessary to assess a registrant's potential performance and its relative attractiveness as an investment. We support the Commission's taking actions to facilitate investment advisers' ability to engage in ESG investing.

I. Executive Summary

We agree with the Commission that the provision of more consistent, comparable, and reliable ESG disclosures of material information by registrants will allow investment advisers to better serve their clients by improving transparency for investors and facilitating apples-to-apples analysis and comparison of registrants. We also believe that this will in turn lead to better and more accurate pricing of risks,[5] and thus largely support the Proposal. Below, we first make

---

available at https://www.sec.gov/news/public-statement/lee-climate-change-disclosures (**Lee Request**). *See* Letter from IAA General Counsel Gail C. Bernstein, *Public Input on Climate Change Disclosures* (June 11, 2021), available at https://investmentadviser.org/resources/public-input-on-climate-change-disclosures/ (**IAA Response to Lee Request**).

[5] Hidden risks and opportunities can lead investors to misprice assets – overvaluing companies with unmitigated physical exposures or undervaluing those poised to deliver stronger returns through a net zero carbon transition. Studies from the International Monetary Fund (**IMF**) have shown that equity markets do not accurately reflect the physical risk of key climate change scenarios, a mispricing that could undermine financial returns. *See* IMF, Global Financial Stability Report (Apr. 2020), available at https://www.imf.org/-/media/Files/Publications/GFSR/2020/April/English/text.ashx. *See also* Thomas Stoerk, Gernot Wagner, and Robert E. T. Ward, *Recommendations for Improving the Treatment of Risk and Uncertainty in Economic Estimates of Climate Impacts in the Sixth Intergovernmental Panel on Climate Change Assessment Report*, Review of Environmental Economics and Policy, Vol. 12, Number 2, pp. 371-376, available at https://www.journals.uchicago.edu/doi/epdf/10.1093/reep/rey005 ("mounting evidence that current economic models of the aggregate global impacts of climate change are inadequate in their treatment of uncertainty and grossly underestimate potential future risks"). These disclosures are critically important as studies have estimated that the "climate value at risk" of global financial assets could reach up to $24 trillion by 2100. The Carbon Disclosure Project (**CDP**) recently reported that 215 of the world's largest companies expected to see almost $1 trillion in value at risk from climate change within the next five years and that losses could be significantly higher over the long term across all asset classes. Impax Asset Management, *Physical Climate Risks Designing a resilient*

some general observations and comments and describe how IAA members could use the proposed disclosures. We then offer several comments and recommendations that we believe would further the Commission's objectives and improve the Proposal. Our comments are organized into four categories: (A) climate-related governance, risk, targets and goals, and other disclosures; (B) Scopes 1, 2, and 3 greenhouse gas (**GHG**) emissions; (C) notes to audited financial statements providing climate-related metrics and impacts; and (D) general recommendations. We make the following specific comments and recommendations:

A. Climate-related governance, risk, targets, and goals, and other disclosures

We generally support the Commission's adoption of rules that require disclosure of climate-related governance, risk, targets, and goals. We agree with the Commission that these rules should require presentation of climate-specific financial information on a separate basis and not specify particular time periods for time horizons but instead issue guidance.

In addition, we recommend that any rules that the Commission adopts:

- Balance flexibility for registrants and standardization of disclosures;
- Eliminate certain proposed prescriptive board oversight requirements; and
- Provide additional examples of physical and transition risks.

B. Scopes 1, 2, and 3 GHG emissions

We generally support the Commission's adoption of rules, with certain recommended modifications, that:

- Require registrants to disclose Scopes 1 and 2 GHG emissions; and
- Require non-smaller reporting company (**SRC**) registrants to obtain attestation for Scopes 1 and 2 GHG emissions.

We recommend, however, that the Commission not require registrants to disclose their Scope 3 GHG emissions at this time due to data gaps and the absence of agreed-upon measurement methodologies. Should the Commission nevertheless require disclosure of Scope 3 GHG emissions, we recommend that it only require disclosure of Scope 3 GHG emissions when they

---

response to the inevitable impact of climate change (Sept. 2020), available at https://impaxam.com/wp-content/uploads/2020/09/20200924_physical_climate_risk.pdf (citing CDP, *World's biggest companies face $1 trillion in climate change risks* (June 4, 2019), available at https://www.cdp.net/en/articles/media/worlds-biggest-companies-face-1-trillion-in-climate-change-risks.

are material, and not require disclosure if the registrant has set an emissions target or goal that includes those emissions.

With respect to all required climate-related disclosures, we recommend that the Commission clarify the standard for materiality to be used.

We also recommend that the Commission require GHG emissions attestation providers to have familiarity with the specific industry of the registrant for which the attestation report is being provided.

C. Notes to audited financial statements providing climate-related metrics and impacts

We generally support the Commission's adoption of rules that:

- Require registrants to apply the same set of accounting principles consistently throughout their consolidated financial statements; and

- Require registrants to disclose estimates and assumptions used.

However, we recommend that the Commission:

- Replace the proposed one percent quantitative threshold for climate-related metrics and impacts with a materiality standard; and

- Phase in the historical lookback period for climate-related financial disclosures.

D. General recommendations

We recommend that the Commission:

- Engage its global partners;

- Clarify the proposed rules' impact on registrants that are SRCs and accelerated filers;

- Consider delaying the effective date for the proposed rules for one year or, in the alternative, adopt a non-enforcement policy for one year following the effective date of the rule; and

- Not implement an ESG rule for investment advisers, investment companies, or investment funds until the Proposal has been finalized.

We discuss our recommendations below. For convenience, we provide a glossary of abbreviated terms at the end of our comments.

II. Background

A. The current climate-related reporting regime does not yield sufficient or sufficiently accurate and consistent information.

IAA members have found that, despite their need for climate-related financial risk data, they have had challenges with obtaining adequate data to conduct a fulsome assessment of registrants' climate risk and their plans to mitigate this risk. While the Commission has previously provided guidance in this area, there have been no specific requirements governing registrant climate-related financial risk disclosures.

Due to the lack of a comprehensive global regulatory strategy, a diverse group of third parties[6] have developed voluntary climate-related reporting frameworks and standards[7] seeking to meet investors' informational demands.[8] However, because these frameworks are voluntary, registrants that choose to disclose under them may provide partial disclosures or they may choose not to participate every year. In addition, the form and content of the disclosures may vary significantly from registrant to registrant, or from period to period for the same registrant. Because disclosure is voluntary, registrants can also choose which issues to address and which reporting metrics to apply.[9] We point to the $14.7 billion Volkswagen settlement with U.S. regulators to illustrate the potential consequences of such an approach.[10]

---

[6] These include the Global Reporting Initiative (**GRI**), CDP, Climate Disclosure Standards Board (**CDSB**), Value Reporting Foundation (**VRF**) (formed through a merger of the Sustainability Accounting Standards Board (**SASB**) and the International Integrated Reporting Council (**IIRC**)), and the Task Force on Climate-Related Financial Disclosures (**TCFD**).

[7] "It is important to distinguish between sustainability frameworks and sustainability standards. Frameworks provide principles-based guidance on how information is structured, how it is prepared, and what broad topics are covered. Meanwhile, standards provide specific, detailed, and replicable requirements for what should be reported for each topic, including metrics. Standards make frameworks actionable, ensuring comparable, consistent, and reliable disclosure. Frameworks and standards are complementary and are designed to be used together." SASB, *SASB Standards & Other ESG Frameworks*, available at https://www.sasb.org/about/sasb-and-other-esg-frameworks/#:~:text=Frameworks%20provide%20principles%2Dbased%20guidance,for%20each%20topic%2C%20including%20metrics.

[8] *See* TCFD, About, available at https://www.fsbtcfd.org/about/.

[9] *See* SASB, Climate Risk Technical Bulletin TB001-10182016 (Oct. 2016), available at https://www.eenews.net/assets/2016/10/20/document_cw_01.pdf (finding current ESG disclosure practices inadequate because of widespread omission of ESG disclosures and pervasive use of boilerplate language by companies that do provide ESG disclosures); Thomas Lee Hazen, *Social Issues in the Spotlight: The Increasing Need to Improve Publicly-Held Companies' CSR and ESG Disclosures*, 23 U. PA J. Bus. L. 740, 749-51 (2021) (describing the "lack of standardization" in voluntary ESG disclosures and the resulting "confusing inconsistencies in ESG data" in such disclosures); Virginia Harper Ho, *Nonfinancial Risk Disclosure and the Costs of Private Ordering*, 55 AM. Bus. L.J. 407, 443-52 (2018) (discussing the costs imposed on markets by the current manner of disclosure that relies on private ordering and the inconsistent and unreliable ESG disclosure resulting therefrom).

[10] Volkswagen had announced itself as the "world's most sustainable automotive group" and been named the world's most sustainable car company by the Dow Jones Sustainability Index. Just one week later, however, U.S.

B. The IAA supports consistent, comparable, and reliable ESG disclosures of material information by registrants.

Having consistent, comparable, and reliable disclosures of material information from registrants, including disclosures related to climate-related matters, would help investment advisers make informed decisions on behalf of their clients. This information, provided on a timely basis, enhances investment advisers' understanding, management, and disclosure of risk, including risks related to an entire portfolio, and enables investment advisers to identify opportunities for creating value for their clients.

Many investment advisers also look to climate-related factors as a risk mitigator, so enhancements in reporting, standardization of reporting, and transparency can help them incorporate relevant data into their valuation models. Many investment advisers in the space also currently use this type of information to engage with registrants to help them to improve their practices– potentially unlocking value.

Many investment advisers also rely on third-party ratings and rankings in the absence of a consistent regulatory framework. However, third-party ratings suffer from some of the same defects, including limitations in coverage and differences in the information used.[11] A November 2021 International Organization of Securities Commissions (**IOSCO**)[12] report found that with respect to ESG ratings and data products, there is little clarity and alignment on definitions, including on what ratings or data products intend to measure and a lack of transparency about the methodologies underpinning the ratings or data products.[13] A balanced regulatory framework

---

regulators publicly announced the emissions scandal that would lead to the massive settlement. In Volkswagen's sustainability reports, the company had concentrated heavily on its efforts to reduce CO_2 emissions and included little discussion of its emissions of NO_X, later found to be the main pollutant released by Volkswagen's cars as a result of its emissions-testing modifications. *See* Dept. of Justice, Press Release, *Volkswagen to Spend Up to $14.7 Billion to Settle Allegations of Cheating Emissions Tests and Deceiving Customers on 2.0 Liter Diesel Vehicles* (June 28, 2016), https://www.justice.gov/opa/pr/volkswagen-spend-147-billion-settle-allegations-cheating-emissions-tests-and-deceiving; Letter from Phillip A. Brooks, Dir., Air Enf't Div., Environmental Protection Agency (**EPA**), to David Geanacopoulos, Exec. Vice President, Pub. Affairs & Gen. Counsel, Volkswagen Grp. of Am. & Stuart Johnson, Gen. Manager, Eng'g & Envtl. Office, Volkswagen Grp. of Am., Regarding Notice of Violation (Sept. 18, 2015), available at https://www.epa.gov/sites/production/files/2015-10/documents/vw-nov-caa-09-18-15.pdf.

[11] One analysis that compared three of the most well-known corporate social responsibility (**CSR**) rankings published in 2015 (Newsweek, Forbes, and CSR Magazine Global) found that only 12% of companies appeared on all three lists. Beixin (Betsy) Lin *et al.*, *Are Sustainability Rankings Consistent Across Ratings Agencies?*, CPA Journal (Jul. 2017), available at https://www.cpajournal.com/2017/07/19/sustainability-rankings-consistent-across-ratings-agencies/.

[12] IOSCO is the leading international policy forum for securities regulators and is recognized as the global standard setter for securities regulation. The organization's membership regulates more than 95% of the world's securities markets.

[13] IOSCO, *Environmental, Social and Governance (ESG) Ratings and Data Products Providers*, FR09/21, Nov. 2021, available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD690.pdf. The report specifically noted that the lack of standardization of corporate disclosures "impacts the quality and availability of information that can be

could also improve the quality and reliability of information provided by ESG rating providers and reduce reliance on estimated data.[14]

C. The IAA generally supports modeling the Proposal on the TCFD framework and GHG Protocol.

The IAA is pleased to see that the Commission has leveraged existing frameworks and standards to encourage consistency, which is something we requested in the IAA Response to Lee Request.[15] With many registrants already providing reporting based on the TCFD framework and GHG Protocol (albeit not in a uniform way), we support the Proposal's leveraging these frameworks and standards that many registrants use and/or are familiar with to inform its rulemaking. For example, as of April 2022, 395 U.S.-based organizations have publicly pledged support for the TCFD.[16] As of 2016, 92 percent of Fortune 500 companies that responded to the CDP used GHG Protocol directly or indirectly through a program based on GHG Protocol.[17]

We also believe this will increase global harmonization because the European Union (**EU**) incorporates the TCFD framework in its regulations and Brazil, Hong Kong, Japan, New Zealand, Singapore, Switzerland, and the United Kingdom align their regulations with the TCFD framework.[18] The TCFD framework also is supported by several international standard setters and regulatory groups including the G7 Finance Ministers & Central Bank Governors,[19] financial

---

used by ESG ratings and data products providers" and that the "findings are largely consistent with IOSCO's observations from the investor standpoint, namely that sustainability-related information needs are currently not being met, and there is an urgent need to improve the consistency, comparability, and reliability of sustainability reporting." *Id.* at 17.

[14] *See* Sustainable Investing is an Active Process, IAA Active Managers Council (2020), for a discussion of the use of sustainability ratings.

[15] *See* IAA Response to Lee Request, *supra* note 4.

[16] TCFD Supporters, Task Force on Climate-Related Financial Disclosures, available at https://www.fsb-tcfd.org/tcfd-supporters/.

[17] GHG Protocol, Companies and Organizations, available at https://ghgprotocol.org/companies-and-organizations.

[18] *See* TCFD, *2021 Status Report* (Oct. 2021), available at https://www fsb.org/wp-content/uploads/P141021-1.pdf.

[19] *See* Press Release, G7 Finance Ministers & Central Bank Governors Communiqué (June 5, 2021), available at https://home.treasury.gov/news/press-releases/jy0215.

Stability Board (**FSB**),[20] International Financial Reporting Standards Foundation (**IFRS**),[21] and IOSCO.[22]

D. The IAA generally supports baseline disclosures and additional disclosures based upon materiality.

The IAA is pleased to see that the Commission proposes to mandate Scope 1 and Scope 2 GHG emissions disclosures, which is something we requested in our response to the Lee Request.[23] While we support these baseline disclosures, as discussed below, we believe it is premature at this point to require disclosure of Scope 3 emissions.[24]

We recognize that for climate-related disclosures there is no historical track record to assist registrants, investors, investment advisers, and other stakeholders with the materiality concept and its application. We note that materiality can be a dynamic concept. For example, sustainability topics that a registrant once considered immaterial for disclosure can become material, based on its analysis. We discuss the issue of materiality more fully below in our recommendations.

E. IAA members' use of disclosures to assess climate-related risks.

The IAA believes that, as a general matter, the disclosures contemplated by the Proposal would better ensure that investment advisers of all sizes have access to more consistent and reliable climate-related information. Investment advisers utilize climate-related information in several ways to assess risk and inform their investment and voting decisions.

For example, an investment adviser could directly input climate-related risk disclosures into its proprietary rating system. However, because the current state of disclosure is inconsistent from registrant to registrant, an investment adviser would need to rely on data cleaning and

---

[20] FSB, Roadmap for Addressing Climate-Related Financial Risks, July 7, 2021, available at https://www.fsb.org/wp-content/uploads/P070721-2.pdf?edLDf=false.

[21] IFRS, IFRS Foundation Trustees announce strategic direction and further steps based on feedback to sustainability reporting consultation, Mar. 8, 2021, available at https://www.ifrs.org/news-and-events/news/2021/03/trustees-announce-strategic-direction-based-on-feedback-to-sustainability-reporting-consultation/.

[22] IOSCO, Final Report, *Report on Sustainability-related Issuer Disclosures*, June 2021, available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD678.pdf?edLDf=false.

[23] Scope 1 emissions "are direct [GHG] emissions that occur from sources that are controlled or owned by an organization (*e.g.*, emissions associated with fuel combustion in boilers, furnaces, vehicles). Scope 2 emissions are indirect GHG emissions associated with the purchase of electricity, heat, or cooling." EPA, EPA Center for Corporate Climate Leadership, *Scope 1 and Scope 2 Inventory Guidance*, available at https://www.epa.gov/climateleadership/scope-1-and-scope-2-inventory-guidance.

[24] Scope 3 emissions are "the result of activities from assets not owned or controlled by the reporting organization, but that the organization indirectly impacts in its value chain. Scope 3 emissions include all sources not within an organization's scope 1 and 2 boundary." EPA, EPA Center for Corporate Climate Leadership, *Scope 3 Inventory Guidance*, available at https://www.epa.gov/climateleadership/scope-3-inventory-guidance.

estimation practices to normalize the metrics and fill in the gaps. Consistency of disclosures is likely to improve the overall accuracy of the investment adviser's underlying ratings.

Climate-related risk information may also be used in an investment adviser's analysis of fund-level characteristics to assess the overall climate-related risk of its portfolios. The forward-looking targets can provide a key input in the analysis of a fund's overall alignment with the Paris Agreement and the underlying Intergovernmental Panel on Climate Change (**IPCC**) scenarios.[25] IAA members also rely on third parties for climate-related financial risk disclosures and GHG emissions data, such as CDP, and, as noted above, these third parties rely primarily on data from registrants to create their reports.[26]

III. IAA Recommendations to the Commission

The IAA generally supports the Proposal and makes the following specific recommendations.

A. Climate-related governance, risk, targets, and goals, and other disclosures

1. The Commission should balance flexibility for registrants and standardization of disclosures.

The Commission should ensure that any final rule balances the need for standardized data while allowing registrants flexibility based upon their industry and/or business model.

2. Registrants should be able to incorporate by reference climate-related disclosures.

One area where the Commission has tried to strike this balance is with respect to whether a registrant would be able to incorporate by reference disclosure from other parts of a registration statement or annual report.[27] The Proposal states that a registrant would be able to "incorporate by reference disclosure from other parts of the registration statement or annual report (*e.g.*, Risk Factors, MD&A, or the financial statements) or, in most cases, from other filed or submitted reports into the Climate-Related Disclosure item if it is responsive to the topics specified in Items 1500–1506 of Regulation S–K and if the registrant satisfies the incorporation by reference requirements under the Commission's rules and forms."[28]

---

[25] IPCC, *IPCC Sixth Assessment Report: Mitigation of Climate Change*, Apr. 4, 2022, available at https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_FinalDraft_FullReport.pdf.

[26] CDP, *supra* note 5 ("CDP data is the foundation of the ESG data ecosystem … over 13,000 companies worth over 64 percent of global market value report to CDP").

[27] 87 Fed. Reg. at 21348.

[28] *Id.*

The IAA supports allowing registrants to incorporate by reference disclosures from other parts of regulatory documents. We agree that this policy will provide flexibility to the proposed climate-related disclosure scheme while reducing redundancy and ensuring the disclosure is consistent and comparable across registrants.

The ability to incorporate by reference in the same document is universal to all reports and classes of registrants and is encouraged by the Commission. However, although the concept is relatively straight forward, the application is complex with differing rules for different classes of registrants (such as an emerging growth company (**EGC**), smaller reporting company (**SRC**), or well-known seasoned issuer (**WKSI**)) and different filings such as a registration statement filed under the Securities Act or a periodic report filed under the Exchange Act.[29]

We encourage the Commission to state explicitly that the Proposal does not alter the current regulatory scheme concerning incorporation by reference and that climate-related disclosures will be treated similarly to other disclosures.

3. The Commission should eliminate certain proposed prescriptive board oversight requirements and instead require disclosure of the board's oversight process.

One additional area where the Commission has tried to strike this balance is related to board oversight. While the IAA generally agrees with the Commission that climate-related financial risk requires board oversight and reporting[30] and that the "proposed disclosure items could provide investors with insight into how a registrant's board considers climate-related risks and any relevant qualifications of board members,"[31] we are concerned about the specificity of some of the board oversight requirements.

For example, the Proposal requires disclosure of whether any member of a registrant's board of directors has expertise in climate-related risks, with disclosure required in sufficient detail to fully describe the nature of the expertise.[32] It is unclear to us what metrics would be used to determine what qualifies as expertise in climate-related risks or how it would be measured – for example, would it need to be expertise in physical climate risk, or could it be with transitional climate risk, or both? Would it need to specify what climatological events the director has expertise with? We also generally believe that the board's experience and expertise as a collective whole may be more important than having individual members with specific expertise and it is not clear how this experience would be treated. In addition, we question

---

[29] 17 C.F.R. § 230.411 (2021) and 17 C.F.R. § 240.12b-23 (2021) respectively.

[30] *See* TCFD 2021 Status Report, *supra* note 18 (study found that only 27 percent of companies disclose how they integrate climate change into broader risk management).

[31] 87 Fed. Reg. at 21359.

[32] *Id.*

whether it is appropriate to single out climate-related expertise when the Commission has not done so for other risk factors.[33]

For the reasons noted above, we recommend that the Commission remove this requirement from the Proposal. Regulation S-K Item 401 currently requires registrants to "discuss the specific experience, qualifications, attributes or skills that led to the conclusion that the person should serve as a director for the registrant at the time that the disclosure is made, in light of the registrant's business and structure."[34] We believe that climate-related risk experience, if related to why the director was chosen to serve, would already be disclosed here. If the Commission does keep the requirement to disclose this experience, we recommend that the Commission consider providing a non-exclusive list of criteria that a registrant could consider in reaching a determination on whether a director has expertise in climate-related risks, similar to what the Commission has proposed in its recent cybersecurity risk management rule for public companies.[35] We would also request that the Commission explicitly clarify that these board members will not be deemed to be an "expert" for any purpose, including for purposes of Section 11 of the Securities Act,[36] and that board oversight in this area does not impose additional duties or liabilities on these directors, or relieve other directors of any of their obligations.[37]

The Proposal also requires registrants to disclose how the board is informed about climate-related risks, and how frequently the board considers such risks. We are concerned that requiring disclosure of the frequency of board discussion of climate risks may pressure boards to discuss the issue more frequently than warranted, perhaps to the detriment of other topics, out of a concern that it may appear that the board is not adequately addressing the issue. Additionally, we believe this may be difficult to implement. For example, what if the only discussion on climate change at a board committee meeting is "there is nothing new to report"? Or what if a single board committee addresses climate change on its agenda several times? How would the frequency of these discussions be determined?

Due to these concerns, we recommend that the Commission only require disclosure of the process the board has developed to provide oversight of climate risks without prescriptive requirements concerning timing of such discussions. This change should lead to a more appropriate and tailored process for each registrant.

---

[33] One exception is the Commission has proposed disclosure of cybersecurity experience in its recent cybersecurity risk management rule for public companies. However, the rule has not been finalized as of the date of this submission. *Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure*, 87 Fed. Reg. 16590, 16602 (Mar. 23, 2022), available at https://www.govinfo.gov/content/pkg/Fed. Reg.-2022-03-23/pdf/2022-05480.pdf.

[34] 17 CFR § 229.401 (2021).

[35] 87 Fed. Reg. at 16602.

[36] 15 U.S.C. § 77k (2021).

[37] This would be similar to the safe harbor for audit committee financial experts under Rule 407 of the Sarbanes-Oxley Act of 2002. 17 C.F.R. § 229.407 (2021).

4. The Commission should modify the proposed disclosure requirements for physical risks and add credit risk to the examples of transition risks.

The Commission requests comment on whether there are other specific metrics that would provide investment advisers and investors with a better understanding of the physical and transition risks facing registrants.[38]

The Proposal defines physical risks as acute risks and chronic risks to the registrant's business operations or the operations of those with whom it does business. Physical risks are complex and multidimensional risks that are functions of hazard, exposure, and vulnerability. For example, it isn't always clear when a risk is chronic or when it's acute.[39] The Commission notes that in some instances, chronic risks might give rise to acute risks. We support mandating disclosure of these risks but recommend that the Commission clarify that companies can decide how to categorize acute and chronic risks and, where there may be overlap (*e.g.*, wildfires can be both an acute and chronic risk to a company), the risk only needs to be identified once.

For any risk that is location dependent, *i.e*., water scarcity/flood risk/wildfires/other climate-related natural disasters, we recommend that the Commission consider requiring registrants to provide quantitative details and/or estimates of the volume or revenue (percentage) contribution for facilities in these locations. These disclosures would help clarify to investors the size and severity of the potential risk. As proposed, risk identification would include the nature (chronic vs. acute), location, and percent of operations/buildings in these areas, but would not touch on the revenue generated/productivity of "at risk" locations and therefore the significance to the overall business.

Transition risks identified by the Commission include increased costs attributable to changes in law or policy, reduced market demand for carbon-intensive products leading to decreased prices or profits for such products, the devaluation or abandonment of assets, risk of legal liability and litigation defense costs, competitive pressures associated with the adoption of new technologies, and reputational impacts.

We recommend that the Commission add credit risk as another example of a transition risk facing registrants. Credit risk is recognized by both Fitch Ratings and Moody's as an important risk.

---

[38] 87 Fed. Reg. at 21353.

[39] 87 Fed. Reg. at 21465-66 (Acute risks are event-driven and may relate to shorter term extreme weather events, such as hurricanes, floods, and tornadoes, among other events. Chronic risks relate to longer term weather patterns and related effects, such as sustained higher temperatures, sea level rise, drought, and increased wildfires, as well as related effects such as decreased arability of farmland, decreased habitability of land, and decreased availability of fresh water.).

5. We support requiring presentation of climate-specific financial information on a separate basis.

The IAA supports the Commission's proposal to present climate-specific financial information on a separate basis. We agree with the Commission that requiring "a registrant to include climate-related disclosure . . . in a separately captioned 'Climate-Related Disclosure' section and in the financial statements . . . would facilitate review of the climate-related disclosure by investors alongside other relevant company financial and non-financial information."[40]

The proposed presentation of climate-specific financial information would provide useful information in the overall assessment of the registrant – *e.g.*, reporting of expenses associated with climate-related events would allow investors to better understand the overall vulnerability of assets, loss experience, and long-term investment in asset resiliency or adaptation. Investment advisers could use this financial information in projections of impacts in proprietary climate scenarios to project potential losses based on the current vulnerability and opportunities resulting from investment in transition. This financial information, along with management comment and oversight, could provide critical information in these overall assessments.

6. The Commission should not specify particular time periods for time horizons.

Under the Proposal, a registrant would be required to describe how it defines short-, medium-, and long-term time horizons, including how it takes into account or reassesses the expected useful life of the registrant's assets and the time horizons for the registrant's planning processes and goals.[41] The Commission has not proposed a specific range of years to define short-, medium-, and long-term time horizons in order to allow flexibility for a registrant to select the time horizons that are most appropriate to its particular circumstances; however, the Commission requests comment on whether it should specify a particular time period, or minimum or maximum range of years, for "short," "medium," and "long term".

The IAA agrees with the Commission's current approach to allow registrants to select time horizons that are most appropriate to their particular circumstances. However, we suggest that the Commission consider providing guidance to registrants to ensure that the time horizons chosen are meaningful for investment advisers and investors. The registrant's chosen time horizons should be compatible with the registrant's capital planning and investment horizons and the useful life of major assets. Registrants may also want to harmonize their time horizons with national and international climate policy communities (*e.g.*, 2030 Agenda for Sustainable Development and Net Zero 2050). Harmonizing time horizons to key years and the cycle of the

[40] 87 Fed. Reg. at 21348.

[41] 87 Fed. Reg. at 21351.

climate policy community can provide an important anchor to, and context with, global climate scenarios, as well as enhance comparability.

B. Scopes 1, 2, and 3 GHG emissions

1. We support requiring registrants to disclose Scopes 1 and 2 GHG emissions.

The Proposal would require registrants to disclose their Scope 1 and Scope 2 GHG emissions, for their most recently completed fiscal year and for the historical fiscal years included in their consolidated financial statements.[42]

The Proposal would require a registrant to disclose its total Scope 1 emissions separately from its total Scope 2 emissions after calculating them from all sources that are included in the registrant's organizational and operational boundaries.[43] For its Scopes 1 and 2 emissions, the proposed rules would require a registrant to disclose the emissions both disaggregated by each constituent greenhouse gas and in the aggregate.[44]

As discussed previously, the IAA supports disclosures of Scopes 1 and 2 GHG emissions. GHG emissions information serves as the starting point for transition risk analysis because it is quantifiable and comparable across registrants and industries. We believe that formalizing these disclosures will help increase pressure on registrants to ensure they are reporting accurately – from what we understand, particularly in carbon heavy industries, there can be wide disparities in the quality of emissions measurement accuracy. GHG emissions provide critically important insight into a registrant's operations – understanding the emissions contributions of a registrant is an important factor for understanding how financially vulnerable the registrant may be to shifts in regulation, technology, and markets during any transition to a lower-carbon economy.

IAA members and their clients care about these disclosures. For example, an investment adviser may use GHG emissions disclosures as an input in its proprietary scoring system. In

---

[42] 87 Fed. Reg. at 21373. We support the Commission's leveraging the GHG Protocol. The EPA also uses the concept of scopes and refers to the GHG Protocol when providing guidance to registrants regarding their GHG emissions inventories, so the data compiled for the EPA's own GHG emissions reporting program can be used in partial fulfillment of a registrant's GHG emissions disclosure obligations and reduce the reporting obligation for registrants. *See* EPA, *Greenhouse Gas Reporting Program*, available at https://www.epa.gov/ghgreporting.

[43] 87 Fed. Reg. at 21466 ("Operational boundaries means the boundaries that determine the direct and indirect emissions associated with the business operations owned or controlled by a registrant". "Organizational boundaries means the boundaries that determine the operations owned or controlled by a registrant for the purpose of calculating its GHG emissions.").

[44] 87 Fed. Reg. at 21375 (The seven greenhouse gases covered by the United Nations Framework Convention on Climate Change (**UNFCCC**)/Kyoto Protocol are (carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), nitrogen trifluoride (NF_3), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6)). The Kyoto Protocol operationalizes the UNFCCC by committing industrialized countries and economies in transition to limit and reduce GHG emissions in accordance with agreed individual targets. United Nations (**UN**), *What is the Kyoto Protocol?*, available at https://unfccc.int/kyoto_protocol.

addition, its voting decisions may focus on encouraging disclosure of GHG emissions. These voting practices would likely evolve as the disclosure landscape improves and more consistent reporting of comparable data allows for an analysis of a registrant's reported GHG emissions versus intended targets. IAA members use GHG emissions data from registrants to conduct carbon footprinting of investment portfolios to see when and whether to buy and appropriate weighting of portfolio companies.

2. The Commission should not require non-SRC registrants to disclose their Scope 3 GHG emissions at this time.

The Proposal would require a non-SRC registrant to disclose its Scope 3 GHG emissions for its most recently completed fiscal year and for the historical fiscal years included in its consolidated financial statements if those emissions are material, or if the registrant has set a GHG emissions reduction target or goal that includes its Scope 3 emissions.[45] We believe it is premature at this point to require disclosure of Scope 3 GHG emissions due to data gaps and the absence of agreed-upon measurement methodologies.[46]

As noted above, Scope 3 emissions are all indirect GHG emissions not otherwise included in a registrant's Scope 2 GHG emissions, which occur in the upstream and downstream activities of a registrant's value chain. Upstream emissions include emissions attributable to goods and services that the registrant acquires, the transportation of goods (for example, to the registrant), and employee business travel and commuting. Downstream emissions include the use of the registrant's products, transportation of products (for example, to the registrant's customers), end-of-life treatment of sold products, and investments made by the registrant.[47]

Unlike Scopes 1 and 2 GHG emissions information, Scope 3 GHG emissions information has not been broadly required or adopted, in part because of the challenges associated with collecting it.[48] As a result, fewer registrants currently provide Scope 3 GHG emissions information. There are many companies that currently report their Scope 3 GHG emissions under voluntary standards and frameworks, however, there are strong limitations to Scope 3 GHG emissions data reliability.[49]

---

[45] 87 Fed. Reg. at 21377-38.

[46] Some IAA members believe that the Commission should require non-SRC registrants to disclose Scope 3 GHG emissions if the emissions are material. These members would prefer to have the opportunity to evaluate any such information as part of their respective decision-making processes.

[47] 87 Fed. Reg. at 21374.

[48] Scope 3 involves emissions outside of the control of a registrant in the value chain and requires engagement with unrelated third parties.

[49] Examples include lack of high-quality primary emission data (companies may rely on creating secondary data based on industry averages, environmentally extended input-output (**EEIO**) data, or other methodologies - this use of secondary data will result in less accurate emissions reporting) and complexity and inconsistency of calculation

While we are encouraged by progress, mostly through private initiatives,[50] we do not believe that reporting is at a stage where it should be required by the Commission. However, we encourage the Commission to address this issue in the future. For example, the Commission could consider having staff provide a report to the Commission within two years after the compliance date of the final rule, which can include an analysis of the impact of reporting Scopes 1 and 2 GHG emissions and the identification of technological and operational improvements that could be used to facilitate a movement to Scope 3 GHG reporting.[51]

3. If the Commission does require non-SRC registrants to disclose their Scope 3 GHG emissions, we offer recommendations to improve the Proposal.

If the Commission does require Scope 3 GHG emissions disclosure in the final rule, we believe that Scope 3 GHG emissions should only be disclosed when they are material. We would recommend the Commission not require disclosure if the registrant has set a GHG emissions reduction target or goal that includes these emissions. We believe that requiring this disclosure would not yield much additional information and could serve as a deterrent to companies setting such targets and goals.

We recommend that, if Scope 3 emissions disclosure is required, the Commission should keep the proposed safe harbor protections[52] in the final rule. This would encourage registrants to disclose more, rather than less, climate-related information and help facilitate the policy objectives of encouraging widespread disclosure of emissions and other climate-related information to help inform investment decisions.

We recommend that the Commission not allow registrants to provide their own categories of upstream or downstream activities and instead should require registrants to use the GHG Protocol categories of upstream and downstream activities.[53] While we appreciate the need for

methodologies (companies in the same sector using different methodologies would create an inconsistent message to stakeholders such as investors).

[50] One example is the Transparency Pathfinder project, whose overall mission is "to enable Scope 3 emissions transparency and accelerate decarbonization". World Business Council for Sustainable Development (**WBCSD**), *Value Chain Carbon Transparency Pathfinder: Enabling decarbonization through Scope 3 emissions transparency* (Mar. 4, 2021), available at https://www.wbcsd.org/Programs/Climate-and-Energy/Climate/SOS-1.5/Resources/Value-Chain-Carbon-Transparency-Pathfinder-Enabling-decarbonization-through-Scope-3-emissions-transparency.

[51] Mandating Scope 3 GHG emissions reporting after registrants gain experience with Scopes 1 and 2 GHG emissions reporting would allow for more accurate reporting.

[52] These proposed protections include an exemption for SRCs from the Scope 3 GHG emissions disclosure provision, a delayed compliance date for Scope 3 emissions disclosure, and a safe harbor for Scope 3 GHG emissions disclosure from certain forms of liability under the Federal securities laws.

[53] The GHG Protocol includes 15 categories. These include Purchased goods and services, Capital goods, Fuel- and energy-related activities, Upstream transportation and distribution, Waste generated in operations, Business travel,

flexibility, and we have provided comment where it would be appropriate, the lack of defined categories would detract from the Commission's goal of reliable and comparable information. As noted previously, Scope 3 GHG emissions may be difficult to determine and calculate and the lack of a standardized list of categories will only exacerbate this difficulty. Retaining the GHG Protocol categories would also lessen the compliance burden for registrants that currently use the GHG Protocol to report their GHG emissions and for those that are required to report their GHG emissions to the EPA.[54]

Where an asset manager is also a reporting company, the Commission should clarify that the investments category of Scope 3 emissions does not include funds managed by an asset manager ("managed assets"). This clarification would make the Proposal consistent with the GHG Protocol, which states that whether an organization is required to report on investments "depends on whose capital is being invested."[55] Under the GHG Protocol, asset owners investing their own capital are required to report emissions from equity investments but asset managers, which are investing clients' capital, "may optionally report on emissions from equity investments managed on behalf of clients (e.g., mutual funds)."[56]

The Proposal would require registrants to identify any upstream or downstream activities that were significant to the registrant when calculating its Scope 3 GHG emissions and separately disclose Scope 3 GHG emissions data for each of those categories together with a total of all Scope 3 GHG emissions.[57] We are concerned that the Commission has not provided clarity to registrants as to what activities would be deemed significant. For example, the Proposal does not define "significant" – the Commission has used the term "significant" as a modifier in other rulemakings, but these contexts are not applicable to GHG emissions disclosures.[58]

We recommend that the Commission require that if Scope 3 GHG emissions are disclosed, all relevant upstream and downstream activities should be separately reported. If registrants are disclosing Scope 3 GHG emissions, they have made the determination that the

---

Employee commuting, Upstream leased assets, Downstream transportation and distribution, Processing of sold products, Use of sold products, End-of-life treatment of sold products, Downstream leased assets, Franchises, and Investments. GHG Protocol, *Scope 3 Calculation Guidance*, https://ghgprotocol.org/scope-3-technical-calculation-guidance.

[54] The EPA uses the GHG Protocol for GHG emissions reporting.

[55] GHG Protocol, *Technical Guidance for Calculating Scope 3 Emissions (version 1.0); Supplement to the Corporate Value Chain (Scope 3) Accounting & Reporting Standard*, at 141, Box 15.1, available at https://ghgprotocol.org/sites/default/files/standards/Scope3_Calculation_Guidance_0.pdf.

[56] *Id*. "[I]t should be noted that mutual funds and other funds managed on behalf of clients are not the primary audience for the calculation methods described here and some of their specific issues have not been addressed, including the business goals relevant to a fund manager and the appropriate use of inventory results."

[57] 87 Fed. Reg. at 21380.

[58] *See* 17 C.F.R. § 210.1-02 (2021) (defining significant deficiency and significant subsidiary).

emissions are material. It is important to note that not every category of Scope 3 GHG emissions will be relevant to all registrants.

The Commission also states that "it may be useful [for investors in companies that do omit Scope 3 emissions for lack of materiality] to understand the basis for that determination." Thus, for example, if a registrant "determines that certain categories of Scope 3 emissions are material, [it] should consider disclosing why other categories are not material."[59] We recommend that the Commission make clear that this approach is not intended to, nor does it require, registrants to publicly affirm the non-existence and/or non-materiality of certain Scope 3 emissions. Instead, we believe the Commission should only require registrants to make a thoughtful and objective evaluation, based on materiality, as to which Scope 3 emissions need to be disclosed under the Proposal.

We also agree with the Commission that Scope 3 GHG emissions should not be subject to attestation. Depending on the size and complexity of a company and its value chain, the task of calculating Scope 3 GHG emissions could be relatively more burdensome and expensive than calculating Scopes 1 and GHG emissions. In particular, it may be difficult to obtain activity data from suppliers, customers, and other third parties in a registrant's value chain, or to verify the accuracy of that information compared to disclosures of Scopes 1 and 2 GHG emissions data, which are more readily available to a registrant.

4. The Commission should clarify the standard for materiality used for climate-related disclosures and GHG emissions reporting.

Under the Proposal, a determination of materiality would be required for several items in Regulation S-K. We appreciate that the Commission has stated that the definition of "materiality" applicable to registrants is the one used under the U.S. securities laws, notwithstanding other "materiality" definitions used by international or non-U.S. reporting frameworks.[60] However, we are concerned that the Proposal does not provide registrants with clarity on which U.S. standard of materiality would be required when making determinations regarding climate-related risk disclosures and Scope 3 GHG emissions disclosures.

The IAA urges the Commission to clarify its position on the standard for materiality when making these disclosures, and expressly confirm that materiality for these purposes is under the test articulated in the Supreme Court's *Basic v. Levinson* opinion and codified by the Commission in the Exchange Act and Securities Act.[61] Under this test, a fact is material "if there

---

[59] 87 Fed. Reg. at 21379.

[60] *See* Chair Gary Gensler, *Statement on Proposed Mandatory Climate Risk Disclosures* (Mar. 21, 2022), available at https://www.sec.gov/news/statement/gensler-climate-disclosure-20220321.

[61] 87 Fed. Reg. at 21351 (citing 17 C.F.R. § 240.12b–2 (2021)). Exchange Act Rule 12b-2 is made applicable to registrant disclosures in annual reports on Form 10-Ks, by virtue of General Instruction B to Form 10-K. There is an identical definition of material under the Securities Act. 17 C.F.R. § 230.405 (2021).

is a substantial likelihood that a reasonable investor would consider [it] important when making an investment or voting decision," considering "the total mix of information."[62]

The Proposal may be providing potentially inconsistent guidance on when information would be considered material by registrants. While the *Basic v. Levinson* test looks at the question of likelihood through the eyes of "the reasonable investor" considering "the total mix of information,"[63] the Proposal also appears to look at materiality through the eyes of management. It states that "[t]he materiality determination that a registrant would be required to make regarding climate-related risks under the proposed rules is similar to what is required when preparing the MD&A section in a registration statement or annual report," and goes on to note that the proposed rule "serves to emphasize that, when assessing the materiality of a particular risk, management should consider its magnitude and probability over the short, medium, and long term. In the context of climate, the magnitude and probability of such risks vary and can be significant over such time periods."[64] The MD&A materiality test is thus markedly different from the *Basic v. Levinson* test, and we ask that the Commission confirm that the *Basic v. Levinson* test will control.

We also appreciate that the *Basic v. Levinson* test makes clear that the determination of whether a piece of information is material is an "inherently fact-specific finding" and a purpose of the analysis is to prevent management from burying shareholders in an "avalanche of trivial information."[65] In this regard, we believe that the effectiveness of disclosure decreases with the accumulation of unnecessary detail or duplicative or uninformative disclosure that obscures material information.[66] Thus, while all material information should be required to be disclosed, we recommend that the Commission encourage registrants to use a "layered" approach to disclosure. Such an approach would present information in a manner that emphasizes, within the universe of material information that is disclosed, the information and analysis that would be most important to a reasonable investor. This presentation would assist investors and investment advisers in identifying more readily the most important information.[67]

---

[62] *See* 87 Fed. Reg. at 21378 (citing *Basic Inc. v. Levinson*, 485 U.S. 224, 231, 232, and 240 (1988) and *TSC Industries, Inc. v. Northway, Inc.*, 426 U. S. 438, 449 (1977)).

[63] *Basic*, 485 U.S. at 231-32.

[64] 87 Fed. Reg. at 21352.

[65] *Basic*, 485 U.S. at 236.

[66] *See Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations*, 68 Fed. Reg. 75056 (Dec. 29, 2003), available at https://www.govinfo.gov/content/pkg/Fed. Reg.-2003-12-29/pdf/03-31802.pdf.

[67] The Exchange Act "requires more than disclosure, it requires adequate disclosure. The more material the facts, the more they should be brought to the attention of the public. To view it otherwise would be to invite frustration of the policies underlying our disclosure laws. Accordingly, we have found certain facts to be 'buried' in the explanatory materials. These facts should have in some way been highlighted to insure that the shareholders were aware of them." *Kohn v. American Metal Climax, Inc*., 322 F. Supp. 1331, 1362 (E.D. Pa. 1971), modified, 458 F.2d 255 (3d Cir. 1972), cert. denied, 409 U.S. 874 (1972).

We also agree with the Commission that a bright-line quantitative threshold for a materiality determination would be inappropriate.[68] We recommend removing any reference to a quantitative threshold from the final release to avoid any confusion.[69]

5. The Commission should require accelerated and large accelerated filers to obtain attestation for Scopes 1 and 2 GHG emissions.

The Proposal would require registrants, including foreign private issuers, that are accelerated filers or large accelerated filers to provide an attestation report covering the disclosure of its Scopes 1 and 2 GHG emissions.[70] Registrants would initially be required to obtain limited assurance of their Scopes 1 and 2 GHG emissions disclosures and then would transition to obtaining reasonable assurance of their Scopes 1 and 2 GHG emissions disclosures. Attestations would not be required for Scope 3 GHG emissions.[71]

The IAA supports a third-party assurance requirement for Scopes 1 and 2 GHG emissions. The calculation of GHG emissions involves complex estimations, assumptions, and methodologies. Requiring third-party assurances as to the accuracy of such disclosures is important to ensure there is confidence in the results and that investors and investment advisers can reasonably rely on the disclosures that are provided.

---

[68] *Basic*, 485 U.S. at 236 ("Any approach that designates a single fact or occurrence as always determinative of an inherently fact-specific finding such as materiality, must necessarily be overinclusive or underinclusive."); *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 30 (2011) ("the materiality of adverse event reports cannot be reduced to a bright-line rule."); *Litwin v. Blackstone Grp*., 634 F.3d 706, 717 (2d Cir. 2011) (courts have "consistently rejected a formulaic approach to assessing the materiality of an alleged misrepresentation" (*quoting Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 162 (2d Cir. 2000)). The Commission has noted in a 1999 staff accounting bulletin (**SAB**), that "misstatements are not immaterial simply because they fall beneath a numerical threshold." SEC, *SEC Staff Accounting Bulletin: No. 99 – Materiality, 17 CFR Part 211* (Aug. 12, 1999), available at https://www.sec.gov/interps/account/sab99.htm.

[69] 87 Fed. Reg. at 21379. The Commission notes that some registrants rely on, or support reliance on, a quantitative threshold such as 40 percent when assessing the materiality of Scope 3 GHG emissions.

[70] 87 Fed. Reg. at 21392.

[71] Limited and reasonable assurance are terms of art in the auditing world with significant differences. Broadly, limited assurance is a form of negative assurance that the attester is unaware of any material issues. The Public Company Accounting Oversight Board (**PCAOB**) describes a limited assurance opinion as an auditor opinion that "[b]ased on our review and the report of other accountants, we are not aware of any material modifications that should be made to the accompanying interim financial information (statements) for it (them) to be in conformity with accounting principles generally accepted in the United States of America." Reasonable assurance, by contrast, is an affirmative attestation that the information is fairly presented in all material respects. The PCAOB describes this as an "opinion that the financial statements present fairly, in all material respects, the financial position of the company as of the balance sheet date and the results of its operations and its cash flows for the period then ended in conformity with the applicable financial reporting framework." PCAOB, *AS 4105: Reviews of Interim Financial Information*, available at https://pcaobus.org/oversight/standards/auditing-standards/details/AS4105; PCAOB, *AS 3101: The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion*, available at https://pcaobus.org/oversight/standards/auditing-standards/details/AS3101.

We note that while the Proposal includes a transition to reasonable assurance for Scopes 1 and 2 GHG emissions disclosure, it does not contemplate reasonable assurance for the framework that registrants use to monitor, record, and report their GHG emissions. Rather than internal control over financial reporting (**ICFR**),[72] GHG emissions disclosures would be subject to the disclosure controls and procedures (**DCP**).[73] Registrants must design DCP to ensure that information required to be disclosed is recorded, processed, summarized, and reported within the relevant time periods and is accumulated and communicated to the registrant's management as appropriate to allow timely decisions regarding the required disclosure.[74] Unlike ICFR, there is no requirement for a registered public accounting firm to attest to and report on a registrant's assessment of its DCP.

The IAA agrees that a registrant's GHG emission disclosures should not be subject to ICFR at this time. We note that a registrant's GHG emissions disclosures will be subject to limited and then reasonable assurance auditing. We also note that the financial impacts of severe weather events and other natural conditions and financial impacts related to transition activities, which may include the impact of any efforts to reduce GHG emissions, would be included in a note to the registrant's audited financial statements and would be subject to ICFR. For these reasons, we believe that subjecting a registrant's framework to monitoring, recording, and reporting its GHG emissions to ICFR is unnecessary at this time.

6. The Commission should require GHG emissions attestation providers to have familiarity with the specific industry of the registrant for which the attestation report is being provided.

The Proposal would require a GHG emissions attestation provider to be a person or a firm that is an expert in GHG emissions by virtue of having significant experience in measuring, analyzing, reporting, or attesting to GHG emissions and is independent with respect to the registrant, and any of its affiliates, for which it is providing the attestation report, during the attestation and professional engagement period.[75] We are concerned that, to meet demand and satisfy the independence criteria, the attestation requirements in the proposed rules would drive a major expansion in the marketplace, with the likely result that the universe of qualified attestation providers will lag behind the demand necessitated by the adoption of these rules. We thus recommend that the Commission consider additional requirements for attestation providers to ensure that they have the requisite expertise. In addition to the current requirements, for example, the Commission could consider requiring attestation providers to have familiarity with the specific industry of the registrant for which the attestation report is being provided. We believe that this requirement should enhance the attestation quality and provide greater

[72] *See* 15 U.S.C. § 7262 (2021).

[73] *See* 17 C.F.R. § 240.13a-15 (2021) and 17 C.F.R. § 240.15d-15 (2021).

[74] *Id.*

[75] 87 Fed. Reg. at 21470.

transparency to investors and investment advisers without unduly burdening attestation providers.

We are also concerned that the strict independence criteria would have the unintended consequence of prohibiting registrants from using firms that may be the most qualified to provide attestations because those firms also provide other services to registrants or their affiliates, such as audit or consulting services. Limiting the universe of attestation providers in this way would also likely make it more difficult for registrants to find attestation providers. We believe that this aspect of the Proposal is overbroad and recommend that the Commission permit appropriately qualified firms to provide services – at the very least to affiliates of the registrant – in addition to their attestation services.

C. Notes to audited financial statements providing climate-related metrics and impacts

1. The Commission should require registrants to apply the same set of accounting principles consistently throughout their consolidated financial statements.

The Proposal requires registrants to disclose in a note to their financial statements certain disaggregated climate-related financial statement metrics that are mainly derived from existing financial statement line items. These include financial impact metrics, expenditure metrics, and financial estimates and assumptions.[76] Under the Proposal, to avoid potential confusion, maintain consistency with the rest of the financial statements, and aid comparability, registrants would be required to calculate the proposed financial statement metrics using financial information that is consistent with the scope of the rest of the registrant's consolidated financial statements.[77]

We agree that applying the same set of accounting principles consistently throughout a registrant's consolidated financial statements is important and will aid comparability.

2. The Commission should require registrants to disclose estimates and assumptions used.

The Proposal would require a registrant to disclose whether the estimates and assumptions used to produce the consolidated financial statements were impacted by exposures to risks and uncertainties associated with, or known impacts from, climate-related events.[78] Estimates and assumptions are currently required for accounting and financial reporting

[76] 87 Fed. Reg. at 21363.

[77] 87 Fed. Reg. at 21364.

[78] 87 Fed. Reg. at 21371.

purposes, so we do not believe that this requirement is likely to impose an undue burden on registrants.[79]

The IAA agrees that estimates and assumptions should be disclosed in registrants' financial statements. For climate-related financial risk to be assessed and quantified using financial metrics, investors need to understand the degree of uncertainty of projections and be able to use that information to alter investment choices as their understanding of future risks improves.

3. The Commission should replace the proposed rules' one percent quantitative threshold for financial impact from climate-related events and transition activities with a materiality standard.

The IAA generally believes that the disclosure of the financial impact from climate-related events and transition activities could yield decision-useful information for investment advisers and investors.[80] We agree with the Commission that "separately stating the financial statement impacts from the related events and transition activities could improve comparability across both the registrant's year-to-year disclosures and the disclosures of different registrants."[81]

While we agree that the proposed disclosure is appropriate, we recommend that the Commission replace the Proposal's one percent quantitative threshold with a materiality standard as discussed above. We recognize that the one percent threshold may "reduce the risk of underreporting such information [and] . . . could also promote comparability and consistency among a registrant's filings over time and among different registrants compared to a principles-based approach."[82] However, as discussed above in the context of climate-related risk disclosures, the IAA believes any bright-line quantitative threshold for a materiality determination would be inappropriate.[83] The Commission has not provided an adequate justification for imposing such a threshold. We believe a materiality standard can strike a better balance between the anticipated benefits to investment advisers and investors, and the cost of reporting and auditing of the proposed note disclosures.

[79] The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect certain reported amounts and disclosures. FASB, *Accounting Standards Codification 275*, available at https://asc fasb.org/imageRoot/54/108316354.pdf.

[80] 87 Fed. Reg. at 21464-65.

[81] 87 Fed. Reg. at 21368.

[82] 87 Fed. Reg. at 21366.

[83] This is consistent with previous Commission guidance. *See SEC Staff Accounting Bulletin No. 99*, *supra* note 68 (rejecting a five percent materiality threshold).

4. The Commission should phase in the proposed historical lookback period for climate-related financial disclosure.

The Proposal would require disclosure to be provided for a registrant's most recently completed fiscal year and for the historical fiscal year(s) included in the registrant's consolidated financial statements in the applicable filing.[84] The Proposal would also require disclosure to be provided for the registrant's most recently completed fiscal year and for the historical fiscal years included in its consolidated financial statements in the applicable filing, to the extent such historical GHG emissions data is reasonably available.[85]

The IAA believes that the historical lookback period is important, but only to a limited extent. We urge the Commission to closely examine the length of the lookback period due to the evolving level of sophistication and changeability of available climate-related data. As proposed, this requirement would require registrants to retroactively calculate metrics for periods where this data was not being collected and measured, making the data less beneficial to investment advisers and investors.

This concern should dissipate over time with increased, consistent reporting, so we recommend that the Commission consider a phased-in approach for historical reporting where the historical reporting requirement would not begin until two years after the effective date of the final rule.

D. General Recommendations

1. The Commission should engage its global partners.

The IAA encourages the Commission to work with its global regulatory partners and voluntary standard setters to promote consistency, where appropriate, recognizing that policy objectives may differ across jurisdictions.

Global coordination is critical to strengthen the quality, transparency, and comparability of climate-related information. Fragmented disclosure between the U.S. and international standards would be a sub-optimal outcome forcing companies to report similar information in

---

[84] 87 Fed. Reg. at 21364. A registrant would not need to provide a corresponding historical metric for a fiscal year preceding its current reporting fiscal year if it is eligible to take advantage of the accommodation in 17 C.F.R. § 230.409 (Rule 409), which states that "[i]f any required information is unknown and not reasonably available to the registrant, either because the obtaining thereof could involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted, subject to the following conditions: (a) The registrant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof. (b) The registrant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information."

[85] 87 Fed. Reg. at 21383.

multiple, disparate formats. As noted previously, we believe the Proposal should establish a path for the efficient collection of directly comparable climate-related information.

In September 2020, five voluntary standard setters (CDP, CDSB, GRI, IIRC, and SASB) published a statement that they currently are working together to create a comprehensive climate-related reporting system.[86] The Chair of the IOSCO Sustainability Task Force also issued an open letter endorsing efforts by the organizations to align sustainability reporting globally.[87] The Commission is an active member of the IOSCO Board and Commission staff members actively participate in Policy Committees. The Commission should continue to engage with its regulatory partners and this "group of five," through IOSCO or otherwise, to assess how it can harmonize disclosure requirements where appropriate.

While the IAA supports harmonization with global standards and encourages the Commission to work with its global partners, we believe that the Commission should not make any commitments to an international standard until after the standard has been created and appropriately considered in the context of U.S. registrants and markets.

2. The Commission should clarify the proposed rules' impact on registrants that are SRCs and accelerated filers.

SRCs are currently exempt from some of the proposed rules' requirements, including Scope 3 emissions disclosures and attestation requirements. The Proposal would also provide a longer transition period for compliance by SRCs. While the IAA generally agrees with the exemptions and longer transition period, we are concerned that the Proposal is not clear on whether the attestation exemption is intended to apply to a registrant that is an SRC and also an accelerated filer.[88] For example, the Proposal uses the term "non-SRC" when discussing the exemption from Scope 3 GHG emissions disclosures, but speaks to accelerated and large accelerated filers – a broader group – when discussing attestation requirements for Scopes 1 and 2 GHG emissions.

The IAA recommends that the Commission clarify whether SRCs are subject to the attestation requirements if they are also accelerated filers. We believe that the Commission meant to exclude all SRCs, but we recommend that the Commission explicitly exclude SRCs in the final rule if that is the intention.

---

[86] CDP, CDSB, GRI, IIRC and SASB, *Statement of Intent to Work Together Towards Comprehensive Corporate Reporting* (Sep. 2020), available at https://29kjwb3armds2g3gi4lq2sx1-wpengine netdna-ssl.com/wp-content/uploads/Statement-of-Intent-to-Work-Together-Towards-Comprehensive-Corporate-Reporting.pdf.

[87] Erik Thedéen, Chair of the IOSCO Task Force on Sustainable Finance, *Open response to the open letter from CDP, CDSB, GRI, IIRC and SASB proposing avenues for Working together to meet the needs of the capital markets* (Oct. 28, 2020), available at https://www.iosco.org/library/speeches/pdf/20201029-Erik-Thed%C3%A9en.pdf.

[88] A registrant is an SRC and accelerated filer if it has a public float of $75 million to less than $250 million and annual revenues of $100 million or more.

3. The Commission should consider delaying the effective date for the proposed rules for one year or, in the alternative, having a non-enforcement policy.

The IAA recommends that the Commission delay the effective date for implementation of the proposed rules for one year. We believe that it would be difficult for registrants to comply with the current timeline for implementation and IAA members, as investors, want to ensure that the disclosures provided by registrants are accurate and complete. It is important that the final rule allows adequate time for registrants to develop and implement processes and controls over the proposed disclosure requirements before being required to obtain reasonable assurance over the climate-related information those requirements provide. This will also allow time for registrants and their auditors to perform testing of the registrant's policies and procedures in the quarters prior to implementation of the proposed rules.[89]

If the Commission does not agree that a delayed effective date is appropriate, we request that the Commission adopt a one-year non-enforcement policy for registrants that are working diligently and in good faith to comply with the final rules.

4. The Commission should not implement ESG rules for investment advisers, investment companies, or investment funds until the Proposal has been finalized.

While the IAA is pleased that the Commission has proposed to address climate-related information provided by registrants prior to any rulemakings affecting investment advisers, investment companies, or investment funds, we note that the Commission has recently proposed ESG-related rules including "Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices"[90] and "Investment Company Names."[91]

---

[89] Assuming that the proposed rules will be adopted with an effective date in December 2022 and that the accelerated filer or large accelerated filer has a December 31st fiscal year-end, accelerated filers would need to disclose their Scopes 1 and 2 GHG emissions for fiscal year 2024 (filed in 2025), would need to include a limited assurance attestation report for fiscal year 2025 (filed in 2026), and would need to include a reasonable assurance attestation report for fiscal year 2027 (filed in 2028). Large accelerated filers would need to disclose their Scopes 1 and 2 GHG emissions for fiscal year 2023 (filed in 2024), would need to include a limited assurance attestation report for fiscal year 2024 (filed in 2025), and would need to include a reasonable assurance attestation report for fiscal year 2026 (filed in 2027). SRCs would need to disclose their Scopes 1 and 2 GHG emissions for fiscal year 2025 (filed in 2026).

[90] *Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices*, 87 Fed. Reg. 36654, available at https://www.govinfo.gov/content/pkg/FR-2022-06-17/pdf/2022-11718.pdf.

[91] *Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices*, 87 Fed. Reg. 36654, available at https://www.govinfo.gov/content/pkg/FR-2022-06-17/pdf/2022-11718.pdf.

We urge the Commission not to implement any rules related to ESG factors for investment advisers, investment companies, and investment funds until the rules for registrants have been finalized. The Commission should sequence implementation and compliance of the proposed rules so that investment advisers and funds have necessary information from registrants before they must comply. As noted above, two of the primary sources of climate-related risk information for investment advisers are registrant disclosures and ESG rating providers. We believe that the proposed rules could improve the quality and reliability of information provided by registrants and ESG rating providers and reduce reliance on estimated data. However, the Commission will not be able to assess the full impact until the proposed rules have been finalized and implemented by registrants.

The IAA notes that the issue of sequencing has arisen with regulations in the EU and there appears to be a consensus that the EU's adoption and compliance timelines have presented substantial challenges for fund and asset managers. For example, under the Sustainable Finance Disclosure Regulation (**SFDR**),[92] which takes effect in a staggered manner, investment advisers and funds will have to disclose how they address sustainability risks in their investment decisions and any adverse impacts on the environment and provide support for sustainability claims made about their products.[93] However, these disclosures are required before companies are required to provide the underlying information. While the EC adopted the Corporate Sustainability Reporting Directive (**CSRD**)[94] in April 2021 – which would ensure that companies report the information that investors and other financial market participants subject to the SFDR need – the first set of standards under the CSRD will likely not be adopted until late 2022 and mandatory reporting will likely not occur until 2024.[95] Because the CSRD requirements will not be adopted until later this year, fund managers and asset managers are having to make disclosures under the SFDR before the companies they invest in provide detailed sustainability information themselves.

[92] European Commission (**EC**), *SFDR* (Nov. 27, 2019), available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R2088&from=EN.

[93] EC, *Regulation on sustainability-related disclosure in the financial services sector*, available at https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/sustainability-related-disclosure-financial-services-sector_en.

[94] EC, *CSRD* (Apr. 21, 2021), available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0189&from=EN.

[95] EC, *Sustainable finance package* (Apr, 21, 2021, updated June 4, 2021), available at https://ec.europa.eu/info/publications/210421-sustainable-finance-communication_en#csrd. *See also* EC, *Questions and Answers: Corporate Sustainability Reporting Directive proposal* (Apr. 21, 2021), https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_1806.

We believe that the Commission can learn from the EU's experience and delay adoption of rules related to investment advisers and funds, so they have the information they need from registrants to comply with the Commission's proposed rulemakings.

* * *

We appreciate the Commission's consideration of our comments on this important Proposal. Please do not hesitate to contact the undersigned at [redacted] if we can be of further assistance.

Respectfully Submitted,

/s/ Gail C. Bernstein

Gail C. Bernstein
General Counsel

/s/ William A. Nelson

William A. Nelson
Associate General Counsel

cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
Renee Jones, Director, Division of Corporation Finance
William A. Birdthistle, Director, Division of Investment Management

Glossary

CDP - Carbon Disclosure Project
CDSB - Climate Disclosure Standards Board
CSR - Corporate Social Responsibility
CSRD - EU's Corporate Sustainability Reporting Directive
DCP - Disclosure Controls and Procedures
EC - European Commission
EEIO - Environmentally Extended Input-Output
EGC - Emerging Growth Company
EU - European Union
FASB - Financial Accounting Standards Board
FSB - Financial Stability Board
GHG - Greenhouse Gas
GRI - Global Reporting Initiative
ICFR - Internal Control over Financial Reporting
IFRS - International Financial Reporting Standards Foundation
IIRC - International Integrated Reporting Council
IMF - International Monetary Fund
IPPC - Intergovernmental Panel on Climate Change
IOSCO - International Organization of Securities Commissions
PCAOB - Public Company Accounting Oversight Board
SAB - Staff Accounting Bulletin
SASB - Sustainability Accounting Standards Board
SFDR - Sustainable Finance Disclosure Regulation
SRC - Smaller Reporting Company
TCFD - Task Force on Climate-Related Financial Disclosures
UN - United Nations
UNFCCC - United Nations Framework Convention on Climate Change
U.S. GAAP - U.S. Generally Accepted Accounting Principles
VRF - Value Reporting Foundation
WBCSD - World Business Council for Sustainable Development
WKSI - Well-known Seasoned Issuer