
June 17, 2022

Gary Gensler, Chair
Hester M. Peirce, Commissioner
Allison Herren Lee, Commissioner
Caroline A. Crenshaw, Commissioner
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, DC, 20549

Re: nZero, Inc. Comments on Enhancement and Standardization of Climate-Related Disclosures for Investors – Rulemaking

Dear Commissioners,

nZero, Inc. (formerly Ledger8760, Inc.) appreciates the opportunity to file these comments on the Securities and Exchange Commission’s (“Commission”) draft rules regarding the Enhancement and Standardization of Climate-Related Disclosures for Investors (the “Draft Rules”). nZero further appreciates the Commission’s reference in the Draft Rules to nZero as an entity that “assists companies, communities, and other organizations in accurately assessing emissions data across all scopes of emissions.”¹

nZero applauds the Commission for undertaking this important rulemaking and is strongly supportive of the Draft Rules overall. nZero does, however, believe that the Draft Rules should do more to specify how a registrant reports its carbon emissions. Specifically, rather than relying on historical averages, reporting during the period of “reasonable assurance” should be of a registrant’s actual Scope 2 emissions, based on hourly data from the Balancing Area² or local electric utility service territory in which the company takes electric service, or from hourly data otherwise directly assignable to the company such as through documented electric purchases. This will not only provide the necessary reasonable assurance of a registrant’s Scope 2 carbon emissions, but will also further the Commission’s stated goal to “improve the consistency, comparability, and reliability of climate-related disclosures.”³ To the extent that the Commission does not make such superior reporting absolutely mandatory, the rules should continue to require that registrants endeavor to use the highest quality data available to them, up to and including such hourly data for Scope 2. A similar best available data standard should be applied to emissions from all three scopes.

¹ *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, 17 CFR §§ 210, 229, 232, 239, and 249 (Mar. 21, 2022) (“Draft Rules”) at p. 380.

² A Balancing Area is the territory over which a particular utility has the responsibility to match electric generation with load.

³ Draft Rules at p. 8.

The Commission’s decision to prepare the Draft Rules is both timely and necessary. As the Commission recognizes, “[i]nvestors need information about climate-related risks ... because climate-related risks have present financial consequences that investors in public companies consider in making investment and voting decisions.”⁴ Climate change is becoming an increasingly significant and disruptive factor in all aspects of life, including corporate operations. It is essential that investors have all relevant information on companies in which they are considering investing so that they can make informed decisions. This includes how climate change may impact a company’s performance and operations, what the company is doing to prepare for these effects, and how the company is both contributing to these effects and what it is doing to minimize that contribution.

Furthermore, standardized and mandatory reporting is essential to ensure investors have accurate and reliable data on which to make their decisions. Reporting carbon emissions is particularly susceptible to inconsistencies and inaccuracies, not only due to the difficulty of determining a company’s Scope 3 emissions, but also because there is no single established method of measuring Scope 2 or Scope 3 emissions, and the existing methodologies, while well developed, permit registrants to use data that do not accurately represent their impacts, while still remaining within the permitted bounds of reporting norms.

nZero agrees with the Commission’s proposal to rely primarily on the TCFD as a disclosure framework, and the GHG Protocol as the framework for reporting GHG emissions. This will help standardize reporting across companies and the actions they are taking and propose to take in the future.

However, the Commission’s rules should provide additional guidance with respect to standardizing the data companies report. As the Commission recognizes, “[a]n increasing number of investors have identified GHG emissions as material to their investment decision-making” but that “there is a lack of consistency, comparability, and reliability in [the] data that our proposal seeks to address.”⁵ Simply delineating the preferred method of reporting emissions – through Scopes 1, 2, and 3 – does not ensure that the data is being reported consistently, comparably, or reliably, though. Even within the parameters of the GHG Protocol, there are vast discrepancies over how data can be reported.

To take Scope 2 as an example, companies today are able to report their emissions based on historical averages, which are, by definition, inaccurate as to any single reporter. A simple hypothetical demonstrates the problem with relying on historical averages to report Scope 2 emissions. Take two identical factories operating in the same Balancing Area and in exactly the same way, except one factory operates from 7pm until 7am, while the other operates from 7am to 7pm. If these factories reported their Scope 2 emissions based on historical averages, they would show identical emissions. In reality, however, the Scope 2 emissions associated with each factory would be starkly different due to the balance of generation on the grid while each is operating and based on the factories’ location. In the Southwest, for instance, the factory operating from 7am to 7pm would have much lower Scope 2 emissions because the Balancing Area in which it is located would be flooded with solar energy during the vast majority of its

⁴ Draft Rules at p. 9.

⁵ *Id.* at p. 154.

operations. As a result, the company operating during the daytime hours will have an incentive to accurately track its emissions on an hourly basis, but the company operating during the evening hours will have an incentive to use less accurate, annual averages. The result will be that one company is accurately disclosing its GHG impact, while the other is able to hide the full extent of its emissions and climate risk from investors – but it would be able to do so without violating the Draft Rules in their current form. This inconsistent outcome is contrary to the spirit and goals of this rulemaking, and should be avoided through additional reporting guidance that requires hourly disclosure, and reinforcement generally of a best available data standard.

To ensure consistent, comparable, and reliable data, therefore, it is imperative that companies be required to report at least their Scope 2 emissions based on hourly data from the Balancing Authority in which they are located.⁶ While this is somewhat more complex and labor-intensive initially, it can be automated after initial data gathering and, as the Commission recognizes, it is not financially burdensome for reporting companies.⁷

The Commission has proposed an auditing framework in which GHG disclosures are subject to a third-party audit, which initially must provide “limited assurance” of the accuracy of these disclosures, followed by “reasonable assurance” beginning in the fourth fiscal year following the start of the compliance obligation in the Draft Rules.⁸ To give companies sufficient time to transition to a framework in which they are able to report their actual GHG emissions (based on the requirements for hourly reporting at the Balancing Authority level discussed above), nZero recommends that companies be allowed to rely on historical averages to meet the “limited assurance” criteria, but provide actual data to meet the “reasonable assurance” criteria.

This framework and transition period would be consistent with how “limited assurance” and “reasonable assurance” are understood as auditing terms. As the Commission notes, “limited assurance” is typically restricted to inquiries and analytical procedures and is a negative assurance of material misstatements, whereas “reasonable assurance” requires more extensive testing and inspection and is a positive assurance that there are no material misstatements.⁹ nZero submits that a third-party auditor cannot provide “reasonable assurance” of a company’s GHG disclosures based solely on historical averages, given the demonstrated inaccuracy of this data as applied to individual companies.¹⁰

nZero appreciates the Commission’s focus on these important issues and its attention to these comments as the Commission works to finalize the Draft Rules. Accurate reporting of GHG emissions is essential to ensuring investors have actionable data on which to make their decisions. The Draft Rules are a welcome and needed first step, which can be enhanced through

⁶ This data can still be reported historically, as the Commission proposes. Draft Rules at p. 183.

⁷ Draft Rules at p. 380 (citing memorandum, dated January 21, 2022, concerning staff meetings with representatives of Ledger8760).

⁸ Draft Rules, Section 229.1505.

⁹ Draft Rules at p. 230

¹⁰ As it is likely that the transition from historical average data to actual data will result in a significant change to a company’s GHG emissions (either upward or downward), if the Commission requires more than one year of historical reporting, the company will need to explain the difference in methodology that led to the change.

nZero's recommendations in these comments. nZero looks forward to continuing its participation in this rulemaking and reviewing the final rules.

Sincerely,

/s/ Adam Kramer

Adam Kramer
Chief Executive Officer
nZero, Inc.