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Submitted via rule-comments@sec.gov

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Secretary
Securities and Exchange Commission
100 F St. NE
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RE: "The Enhancement and Standardization of Climate-Related Disclosure for Investors," 87 Fed. Reg. 21,334 (April 11, 2022), File Number S7-10-22

The Solar Energy Industries Association (SEIA) is the national trade association of the U.S. solar energy industry. Our members promote the environmentally responsible development of distributed and utility-scale solar energy and storage. We are committed to working with federal agencies, environmental and conservation organizations, Tribal governments, state agencies, and other stakeholders to achieve this goal. On behalf of our member companies, SEIA appreciates the opportunity to provide these comments on the Securities and Exchange Commission's ("SEC" or "Commission") proposed rule, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," 87 Fed. Reg. 21,334 (April 11, 2022) ("proposed rule").

SEIA is committed to building a strong solar industry to speed the country's energy transition and address the climate crisis. As the national trade association for the U.S. solar energy industry, which employs more than 230,000 Americans, we represent nearly 1,000 organizations that promote, manufacture, install, and support the development of solar energy. We firmly believe that the clean energy transition must be based on principles of equity and opportunity. These values are infused throughout our organization and ones we are actively working to advance within our industry.

Environmental protection, including reducing carbon emissions from the power sector, is a paramount concern for the solar energy industry. Solar energy is clean, abundant, and the United States has some of the richest solar resources in the world. Deploying more solar energy reduces economy-wide carbon emissions and other harmful pollutants in comparison to fossil fuel-based energy sources. It is an energy solution that provides clean, reliable electricity, increases consumer choice, and helps homeowners and business owners save money on their utility bills. Critically, solar energy helps our nation address the threats of climate change, which are already burdening the economy and investors with billions of dollars of additional costs every year.

I. Introduction

SEIA and its members support the SEC's efforts to increase and standardize climate-related disclosures, as we wrote in comments to the Commission last year.[1] The solar

[1] *Available at* https://www.sec.gov/comments/climate-disclosure/cll12-9402957-262827.pdf.

industry is deeply committed to helping our nation meet the necessary renewable energy targets set forth by President Biden. In order to modernize the grid and address the climate crisis, solar energy must account for at least 30% of U.S. generation by the end of this decade and 40-50% by 2035. That means roughly *quadrupling* our current pace of installations by 2030. We are in a race against time, yet investors lack a uniform system for evaluating the climate impacts and decarbonization goals of some of the largest greenhouse gas ("GHG") emitters.

Given the significant role in power sector decarbonization that solar energy will have, we believe that climate change disclosure rules are essential to rapid buildout of the power grid of the future. Moreover, in light of recent high-profile extreme weather events impacting the U.S. power sector,[2] the Commission's proposed rule should yield as a co-benefit greater market information about the systemic threats to grid reliability posed by climate change, without which the rest of the U.S. economy cannot function. Climate change represents one of the greatest risks to business and investors alike, and promoting disclosure around activities that generate the GHG emissions that cause climate change are squarely within the Commission's obligations to ensure that material information is made available to the investing public. We are therefore encouraged that the proposed rule will codify many of the concepts we supported in our previous comments, including disclosure of Scope 1 and 2 emissions, endorsement of the Greenhouse Gas Protocol, and a phased-in approach to compliance that will reduce burdens on small businesses.

The solar industry, like other industries, also seeks regulatory certainty and durability. For these reasons, we recommend that the Commission modify its approach to disclosure of Scope 3 emissions to ensure that such disclosure is as feasible (including for non-registrants providing goods and services to registrants), robust, and meaningful as possible. While SEIA does not oppose Scope 3 emissions disclosure in concept, the Commission should acknowledge the burdens it will likely place on non-registrant vendors, including small and medium-sized businesses, by extending the proposed compliance schedule.

II. SEIA Supports Disclosure of Physical and Transition-related Risks

Simply stated, there is greater potential for curbing the risk of catastrophic climate change if registrants are required to accurately disclose their physical and transition-related climate risks. First, such disclosure will likely drive increased investment in technologies that reduce emissions (and therefore risks), including solar energy. Second, more disclosure will cultivate climate reporting expertise across industries and reduce the warping effects of corporate greenwashing and questionable mitigation practices.[3]

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[2] *See, e.g.,* North American Electric Reliability Corporation, "Extreme Weather Heightens Reliability Risks this Summer" (May 18, 2022), *available at* https://www.nerc.com/news/Headlines%20DL/May%2018%202022%20SRA%20Announcement.pdf.

[3] *See, e.g.*, Anders Bjørn, Shannon Lloyd, Matthew Brander & H. Damon Matthews, "Renewable Energy Certificates Threaten the Integrity of Corporate Science-based Targets," NATURE CLIMATE CHANGE (June 9, 2022) ("When removing the emission reductions claimed through [renewable energy certificates], companies' combined 2015–2019 scope 2 emission trajectories are no longer aligned with the [Paris Agreement's] 1.5 °C goal, and only barely with the well below 2 °C goal…. If this trend continues, 42% of committed scope 2 emission reductions will not result in real-world mitigation.").

According to the Swiss Re Institute, the world stands to lose 10% of total economic value by mid-century if climate change remains on its current trajectory due to physical factors such as severe weather events, shifting coastlines, and changes to agricultural and living conditions.[4] Today, the world's 215 largest companies face nearly $1 *trillion* in costs due to physical climate risks.[5] These estimates – based on a status quo without robust or uniform disclosure requirements – should give any investor significant pause. They have also rightly called the Commission to act to address these clearly material issues. Specifically, the proposed rule's line-item disclosure requirements on expenditures to mitigate severe weather and how projected severe weather will influence financial estimates[6] will help investors assess companies' exposure to physical risks and resilience planning, enabling better assumptions about companies' forward-looking financial performance.

Transition-related disclosures, including internal corporate climate targets, can also show investors how prepared a registrant is to meet shifting regulatory and consumer demands. Disaggregating GHG emissions by constituent gases, as the proposed rule contemplates and as SEIA recommended in our previous comments, will also enable investors to better assess the risk exposure of companies in methane-intensive sectors such as oil and gas, biofuel production, and electric utilities,[7] which face methane-specific regulatory risks, among others.

III. The Proposed Scope 3 Emissions Disclosure Requirements Should Be Modified

SEIA supports the Commission's proposed rules related to Scope 1 and 2 emissions disclosure. However, as we explained in our previous comments, practices regarding the collection of information related to Scope 3 emissions continues to evolve, including for companies in the relatively new and rapidly growing solar sector. Significant challenges exist regarding the lack of consensus on methodologies, double-counting concerns, and data verification regarding value chain emissions.

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[4] "The Economics of Climate Change" (Apr. 22, 2021), *available at* https://www.swissre.com/institute/research/topics-and-risk-dialogues/climate-and-natural-catastrophe-risk/expertise-publication-economics-of-climate-change.html.

[5] CDP, "World 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.

[6] Proposed 17 C.F.R. § 210.14-02(c).

[7] The investment and long-term generation mix decisions made by investor-owned monopoly utilities have an outsize impact on climate impacts throughout the economy by potentially burdening a captive customer base with more emissions-intensive fuel choices such as coal and natural gas. Because of the unique market position occupied by investor-owned utilities, the proposed rule will correctly require utilities to report on both their owned and purchased generation. Currently, most utilities only report emissions from the generation they own. However, purchased generation should also be reported to provide a more holistic view of a utility's carbon intensity. This will in turn enhance transparency about the emissions intensity of businesses that have no choice but to purchase power from utilities, with little to no additional compliance burden on such businesses.

A. Scope 3 emissions disclosure compliance should have more flexibility

Non-registrant companies likely face serious hurdles as they consider future data requests or commercial contracting requirements from registrant clients regarding Scope 3 emissions information. Even very large companies with existing in-house sustainability resources will potentially struggle to ramp up their data collection, analysis, and communication efforts on the SEC's proposed schedule, which will require Scope 3 disclosure where applicable as soon as fiscal year 2024.

Forthcoming commercial requirements around Scope 3 emissions data in contracts or bid proposals could also create unfair burdens on small and/or non-registrant businesses.[8] This will have the unintended effect of making these companies less competitive against larger or registered companies will have greater resources to engage in Scope 3 emissions analysis or more experience in dealing with emissions accounting as regulated entities. The proposed rule's text contemplates the exact type of value chain emissions discovery that gives rise to this concern and that will touch a very significant number of firms economy-wide.[9]

If Scope 3 requirements are retained, the Commission should make two modifications. First, the final rule should include a provision that registrants must examine publicly-available and other third party studies for relevant Scope 3 emissions estimates before seeking it from vendors through binding instruments such as contracts or bid proposals (*see* proposed § 229.1504(c)(2)(iii), which should be revised to be a mandatory first step and placed at the beginning of subsection (c)(2)). Second, the Scope 3 disclosure compliance deadline for Large Accelerated Filers should be extended to fiscal year 2026 and the deadline for Accelerated and Non-accelerated Files should be extended to fiscal year 2027. As noted above, a final rule will spur the proliferation of climate accounting and expertise across industries, but this will take some time. This approach strikes a more reasonable balance between advancing needed climate disclosures while reducing compliance burdens on non-registrants.

B. The proposed definition of "Scope 3 emissions" is vague, expansive, and should be revised

Proposed § 229.1500(r) contains a number of flaws that the Commission should additionally revise to minimize confusion and encourage the most robust disclosure possible. First, use of the phrase "might include" in reference to upstream and downstream activities is confusing. The Commission should clarify whether the enumerated examples are mandatory; exclusive; whether "might include" means the same as "including but not limited to"; and provide justification for why these particular examples were selected.

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[8] The U.S. Fish and Wildlife Service Service has found that for purposes of a rulemaking on migratory bird takes, every affected business under the Solar Electric Power Generation NAICS code meets the definition of a small business, making solar the only such affected industry examined that is 100% comprised of small businesses. See U.S. Fish and Wildlife Service, "Initial Regulatory Flexibility Analysis for Regulations Governing Take of Migratory Birds," (April 2021), at 5.

[9] Proposed 17 C.F.R. § 229.1504(c)(2)(i)-(ii).

Second, some of the examples are unnecessarily picayune and could distract from more meaningful emissions accounting and disclosure. For example, "business travel" and "employee commuting" seem unlikely to provide material information to investors while imposing an outsize compliance burden. These should be removed from the definition.

Third, in response to Question 104: at a minimum, the Commission needs to be clearer with respect to the retained categories. Categories must be enumerated, finite, and consistent across registrants. But the categories in a final rule should be guided by the principle of avoiding endless speculation, which is disfavored in analogous parts of the law.[10] In addition, the Commission should not include land use effects as a category. Changes in land use are at least one step removed from emissions-causing activity, which should be the focus of Scope 3 disclosure. In addition, this category could have a disproportionate impact on the utility-scale solar industry and lead to unintended consequences by discouraging additional deployment of solar power facilities.

IV. Issues Related to "Renewable power"

The Commission should define the term "renewable power" as it appears in proposed disclosure requirements regarding transition risks, *i.e.*, proposed 17 C.F.R. § 229.1503(c)(3)(iii). The definition should be limited to include electricity generated from solar, wind, hydropower, or geothermal sources only. Sources such as fossil fuels and nuclear should be expressly excluded. The Commission should avoid a flexible definition to avoid compounding greenwashing concerns (for example, would the use of hydrogen produced from fossil fuels to generate electricity be considered "renewable power"?)

In addition, disclosure of use of renewable power as part of transition planning should be according to renewable power source. Understanding how much of a registrant's power is generated by solar, wind, etc., will yield greater information to investors regarding business expenses and planning, and provide more information to the renewable power sector regarding demand and market trends that will aid in accelerating electrification and decarbonization. Similarly, the Commission should further require disclosure of investments in renewable energy that are made directly or in the form of tax equity.

In response to Question 173 regarding renewable energy credits or certificates ("RECs"): in addition to requiring disclosure of information related to technology, location, and source, the Commission should strengthen required disclosures regarding REC cost. For example, REC disclosure could be made in terms of average price per technology (with different technologies likely having different prices due to varying state policies), with the goal of seeking as much price information as possible without disclosing confidential business information. Also desirable in a final rule – but admittedly more difficult to define – would be information regarding actual carbon reduction from RECs.

The benefits of being able to pair robust cost information with carbon reduction in the REC context are significant. This information could make the hourly reporting of carbon

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[10] For example, when conducting environmental reviews under the National Environmental Policy Act, an "agency is not obliged to engage in endless hypothesizing as to remote possibilities." *Fund for Animals v. Kempthorne*, 538 F.3d 124, 137 (2d Cir. 2008) (citations omitted).

benefits associated with renewable generation (*i.e.*, hourly RECs rather than annual RECs) more feasible. For instance, a new solar facility in a location where solar penetration is already high will have less carbon reduction benefit than a resource that offsets high levels of fossil fuel fired generation. SEIA encourages the Commission to consider how greater REC cost and emission offset information could be facilitated through this provision of a final rule.

V. Conclusion

SEIA appreciates the SEC's efforts to issue regulations that balance meaningful climate-related disclosures with minimizing burdens on certain sectors of the economy, including those that will be most essential to combatting climate change such as small and medium-sized solar energy firms. Time is of the essence to fight the climate crisis, and we are encouraged by the Commission's proper exercise of its statutory authority to help further reveal the large, material financial risks posed by climate change to the investing public. We look forward to reviewing a final rule.

Thank you for the opportunity to provide these comments. If you have any questions, please contact me at [redacted].

Sincerely,

/s/ Ben Norris
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