Mindset

June 17, 2022

Via Electronic Mail

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: File Number S7-10-22

Dear Ms. Countryman:

I write on behalf of the Insurance Coalition, a group of insurance companies that share a common interest in federal regulations affecting the industry. We appreciate this opportunity to respond to the notice of proposed rulemaking (NPRM) to require Securities and Exchange Commission (SEC) registrants to provide certain climate-related information in their registration statements and annual reports.

Insurance Coalition members include a uniquely broad cross-section of the industry, including life insurers and property and casualty (P/C) insurers, both domestic and international. Several Insurance Coalition members are SEC registrants and thus would be directly subject to any new disclosure requirements. In addition, insurers are significant institutional investors who benefit from clear, concise, decision-useful disclosures of material risks.[1] We hope that our perspective is useful as you consider this important set of issues.

I. Executive Summary

Insurance Coalition members have a direct stake in understanding all material risks that may affect our ability to protect policyholders, employees, shareholders, and other critical stakeholders. American families and businesses trust us to protect them when it matters most, and we are acutely aware of the broad environmental, social, and economic impacts of climate change, including more frequent and intense severe weather events. In keeping with our commitment to protecting our policyholders, Insurance Coalition member companies are keenly focused on understanding how climate change affects them as both insurance providers and institutional investors.

We believe that investors could benefit from clearer, more uniform, and nationally converged information on climate-related risk. As outlined in detail below, we believe that any final rule would best serve that goal by (1) only requiring the disclosure of information that registrants have determined to be material to their business; (2) avoiding requiring registrants to distinguish between weather-related events and climate-related events; (3) clearly avoiding required disclosure of business confidential information that could cause competitive concerns

[1] *See e.g.*, NAIC Model Law, Investments of Insurers Model Act (2017).

and is unlikely to benefit investors' understanding of risks; (4) enhancing liability protections; (5) providing longer phase-in periods and delaying the effective date to facilitate data availability and quality improvement; (6) staggering timing of any required greenhouse gas (GHG) emission submissions to accommodate the acquisition of any required information from third parties; and (7) clarifying that certain SEC-registered life insurance products are not subject to the rule.

We look forward to continued engagement with the SEC as the rulemaking process unfolds.

II. Breadth and Depth of Required Reporting

We support the SEC's goal of providing decision-useful information to investors regarding material risks. However, in our view the NPRM currently requires disclosure in instances where climate risk does not have a material effect on a registrant, and as noted below, is more likely to frustrate than advance investor understanding of issuer risk. The NPRM also requires registrants to make critical determinations regarding key threshold definitions (e.g., climate-related risks, acute weather-related events, and climate-related impact) that will necessarily vary significantly across insurers even within the same sector. We are concerned that this may undermine the SEC's goal of providing consistent and comparable disclosures to investors. Furthermore, the NPRM would perhaps inadvertently require the disclosure of insurance-specific information regarding property and casualty exposures and life insurer investments that would create very serious business confidentiality concerns. We believe that these problems would be mitigated through a less granular, more principles-based disclosure regime.

In addition, the level and granularity of disclosures called for in the NPRM would disproportionately emphasize climate-related information relative to other risks – including those that may be more material to the registrant – which undermine the decision-usefulness of 10-K filings and impose significant additional costs.

III. Definition of "Materiality"

The NPRM notes that it defines materiality in accordance with Supreme Court precedent and securities law, which require registrants to assess materiality, subject to enforcement actions and civil liability. We agree that the SEC should not depart from current law and practice regarding the materiality threshold for required disclosures. Grounding disclosures in a materiality standard aids investors in assimilating information important to making an informed investment decision. The materiality touchstone is tightly linked to the SEC's investor protection mandate and has helped prevent the required disclosure of information "of such dubious significance that its disclosure does more harm than good."[2]

We appreciate the SEC's commitment to the materiality standard but believe that there are specific provisions in the NPRM that go beyond that standard. As one example, discussed in more detail below, we believe that the NPRM's required disclosures of financial impacts reflects an assumption that any impact over one percent of an individual financial statement line item is considered to be material. We respectfully disagree with this assumption, and believe the requirement to be further complicated by the impracticality of distinguishing climate-related

[2] *TSC Industries, Inc. v. Northway, Inc.*, 426 US 438 (1976).

impacts from other impacts, and severe weather events from events caused by climate change, etc. We are concerned that such disclosures will provide investors with voluminous but not decision-useful information, as there can be an inverse relationship between the volume of disclosures and their utility in decision-making.

IV. Location of Disclosure and Incorporations by Reference (Question 1)

The NPRM asks for comment on the location of disclosures. Rather than requiring detailed disclosures in several locations, including line-item disclosures in financial statements, we suggest that any final rule instead require that registrants address consideration of climate risk, if determined to be material, in the management discussion and analysis (MD&A) section of their annual report. Climate-related language in a registrant's MD&A should be permitted to incorporate reference to other disclosures, as described in detail below.

V. Safe-Harbor Protections from Liability

A. Furnishing versus Filing All Required Climate Data (Question 7)

The NPRM explains that descriptions of climate risks that constitute forward-looking statements would be subject to current-law protections under the Private Securities Litigation Reform Act (PSLRA). Such protections do not preclude enforcement actions by the SEC, and do not extend to statements made in connection with an initial public offering (IPO). The NPRM also includes a separate safe harbor applicable to Scope 3 GHG emissions disclosures.

We believe that given the magnitude, complexity, and uncertainty of the data comprising the NPRM's new required disclosures, any final rule should permit all such disclosures to be furnished rather than filed under Regulation S-K. Further, we believe that S-K safe harbor provisions should apply to all climate-related data furnished by issuers.

To the extent that any final rule fails to extend Regulation S-K safe harbors to climate-related disclosures, as outlined below, we believe that there are several specific areas where liability safe harbors should be clarified or expanded.

B. Safe Harbor for Disclosure of Scenario Analysis and Other Tools (Question 30)

The NPRM requires the disclosure of scenario analysis and other analytical tools, if used, and states that the SEC believes that existing safe harbor from liability would extend to "much of" the disclosures.[3] As discussed in more detail below, we believe that this requirement should be either removed or amended to narrow the scope of required disclosures and encourage use of such tools. To the extent that any final rule retains the requirement as in the NPRM, we suggest that the SEC clarify that any disclosure of scenario analysis and other tools are explicitly protected by safe harbor from liability. In our view, failure to do so would have the unintended consequence of discouraging registrants from using any such analytical tools for fear of legal consequences.

[3] SEC Enhancement and Standardization of Climate-Related Disclosures for Investors pg. 85, 87 Fed. Reg 21334 (April 11, 2022) (to be codified 17 CFR §§ 210, 229, 232, 239, 249).

C. Board Member Liability (Question 34)

The NPRM also requires the disclosure of board members with climate-related expertise. We suggest that the final rule clarify that such board members are not experts under Section 11 of the Securities Act.[4] Such a clarification would align with the current treatment of audit committee members with financial expertise, and with the SEC's recently proposed rule regarding cybersecurity incident and governance disclosure obligations.[5] Providing liability protection will facilitate the recruitment and retention of board members with climate expertise and better align with existing and proposed rules.

D. Safe Harbor for Definitions

The NPRM would require registrants to more specifically define terms such as "climate-related risk," "climate-related impact," "acute weather event," among others. Because of the practical difficulty associated with distinguishing between weather-related events and weather events caused or exacerbated by climate change, the final rule should provide a safe harbor from liability for any terms required to be defined by registrants.

VI. Climate Risk Disclosures

A. Physical Risk Disclosures and Zip-Code Level Data (Question 12)

The NPRM would require disclosure of acute and chronic risks to a registrant's business or operations. Acute risks are described as event-driven risks related to short-term weather events such as hurricanes and floods. We have concerns regarding this required disclosure as applied to insurers, because there is no consensus scientific method for insurers to distinguish between weather-related risks and risks posed by climate change, and the NPRM does not provide a clear mechanism to do so. Even if insurers could identify a particular event as exacerbated by climate change, a myriad of factors affect likely insurance losses, including population density, local emergency response, building codes, etc.

In addition to the above concerns, requiring the disclosure of risks at a localized, zip-code level would be impractical and pose serious competitive concerns for P/C insurers. While the NPRM doesn't cite P/C insurers as an example, we read the rule to potentially require the disclosure of physical risks associated with property and casualty insurance policies issued on a zip-code basis. This would get at the heart of business competition in P/C insurance and would result in insurance company registrants revealing business information at significant competitive expense. Even if it were practically possible to make such disclosures, it would create enormous unintended competitive distortions between publicly traded insurance companies and other insurers. We recommend that any final rule clarify that disclosure of "physical risks" does not require detailed disclosure of the risk of zip-code level property damage associated with insurance policies issued by registrants.

[4] 15 USC § 77k.
[5] SEC Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, 87 Fed. Reg. 16590 (March 23, 2022) (to be codified 17 CFR §§ 229, 232, 239, 240, 249.

The NPRM also asks whether flood risk should be treated distinctly from other climate-related risks. We do not believe that flooding is such a distinct risk that it should be treated differently from other risks.

C. Disclosures of Transition Risks (Question 10)

The NPRM notes that all registrants would be required to disclose material transition risks, including the devaluation of assets. There are several reasons why this risk is mitigated in the case of insurer investments, including diversification, asset-liability matching practices, and regulatory limitations on concentration in any asset. In addition, any assessment of transition risk related to insurer general account investments would require an assessment of the climate-related risks of third parties. Among other problems with this approach, in many cases, such parties would not be legally required to provide climate risk information to institutional investors. Disclosure of transition risk in the context of insurer general account investments raises some of the same issues posed in the NPRM's discussion of Scope 3 GHG emissions disclosures.

VII. Disclosure of Climate-Related Impacts

A. Scenario Analysis (Question 30)

The NPRM requires the disclosure of scenario analysis, only if used by registrants. Scenario analysis is still evolving, and many insurers are in the early stages of developing capabilities and practices. Such work is also based on the use of data that is currently available – which is often limited in scope and may be based on estimates, significant company-specific assumptions, and practices that may be proprietary in nature. Given such factors, we believe it would be premature and counter-productive to impose a requirement to disclose information on scenario analysis practices simply if they are performed by the registrant as the results of the exercises would neither be decision-useful for investors or comparable across companies. Additionally, as noted earlier, the "if used" disclosure requirement may unintentionally discourage registrants from using or performing scenario analysis. Further, we have concerns that the NPRM's stipulation that scenario analysis be disclosure if used departs from the materiality standard.

The NPR also requires that registrants disclose "any analytical tools" used to assess the impact of climate-related risk on its business operations. We believe this to be extremely overbroad. Because insurers have no scientific consensus method to distinguish between weather-related impacts from climate-related impacts, this requirement could compel insurers to disclose virtually every analytical tool associated with their business planning or investment programs. This would raise serious competitive issues and result in a significant volume of additional disclosure that would overwhelm investors. For the above reasons, we recommend that any final rule eliminate the NPRM's requirement that scenario analysis and other analytical tools are disclosed if used.

VIII. Governance Disclosures (Questions 34, 35, 36, 37, 38, 39, 40, 41)

The NPRM would require significant new disclosures regarding board, board committee, and management information. In our view, a summary of the manner in which registrants manage climate risk, if material, at the board and management level would better serve investor needs without providing excessive or irrelevant information. This would also avoid the significant business-confidentiality and competitive issues created by requiring P/C to provide detailed disclosures regarding their management of weather-related risks, a concern raised by Question 36.

IX. Financial Impact Metrics (Questions 59, 60, 61, 63, 64, 65, 66, 68)

The NPRM would require detailed disclosure of financial impact metrics, expenditure metrics, and financial estimates and assumptions associated with climate-related risks. As discussed above, we support removing the requirement of line-by-line disclosure and the one-percent threshold. This quantitative threshold could send false signals regarding the magnitude of climate risk relative to other risks.

Additionally, similar to other disclosures required by the NPRM, financial statement metrics would require non-comparable assessments by registrants regarding climate impacts versus impacts of weather-related events. Further, we are concerned that collecting detailed financial statement metrics will require the development of extensive new processes and analytical tools which is inherently a time-consuming process. While we support the removal of these detailed requirements, to the extent they are retained in any final rule we urge the SEC to extend the compliance deadline, as discussed in more detail below.

X. Audited Financial Statement Considerations (Questions 89, 90, 91, 92)

In general, audits are performed to ensure that accounting statements and related disclosures are performed according to very explicit and well understood requirements. Requiring auditors to assess information around which there is no scientific or legal consensus (i.e., how to determine what is a "climate-related" impact) deviates from the typical scope of the auditor role and sets a difficult precedent for both issuers and auditors. Such subjective disclosures are more appropriately placed in the MD&A as they reflect the views of management versus well established accounting conventions.

In our view, disclosures should not be included in audited financial statements because of the potential additional liability associated with financial statement certifications. Under the Sarbanes-Oxley Act, principal executive and financial officers of a company (typically the CEO and CFO) must personally attest that financial information is accurate and reliable. Requiring such attestations in the context of issuer assessments of the quantitative effect of climate change versus other causes of insurance losses deviates from accounting norms and would be inappropriate in the absence of broad liability protections. Under the current proposal, the PLSRA safe harbors for forward-looking statements are not extended to financial statement disclosures.

Given these complexities and inherent barriers to facilitating clear, decision-useful disclosures, we suggest that investors would be better served if the final rule eliminated the requirement for disclosure in audited financial statements. Specifically, we suggest that such disclosures are better suited to Regulation S-K and disclosed outside of audited financials.

XI. Greenhouse Gas (GHG) Emission Metrics Disclosures

A. Scope 3 Emissions Disclosures (Question 134)

The NPRM would require the disclosure of Scope 3 GHG emissions if material, or if a registrant has set a GHG emissions target that includes Scope 3 emissions. While we support the goal of reducing GHG emissions, we note that securing reliable and comprehensive data regarding emissions beyond a registrant's control, particularly from non-registrants, is not possible for registrants at present. Further, securing reliable third-party data, where possible, will take more time than envisioned in the NPRM's proposed implementation timeline. Thus, compliance with the NPRM's Scope 3 requirements in the short term would be impossible from a practical perspective as information will likely not exist or be available in time to be incorporated into a registrant's 10-K.

The materiality of Scope 3 emissions also varies widely across industries. We believe that issuers and investors would benefit from greater clarity regarding the specific Scope 3 emissions they are required to report, including control boundaries, level of granularity and expectations for the broad universe of assets in which insurers invest. While the NPR points to use of the Partnership for Carbon Accounting Financials (PCAF) Global GHG Accounting and Reporting standards for financial registrants, and the asset classes the PCAF has addressed to date, the proposal is silent regarding expectations for the broader universe of assets invested in by financial registrants. Further, the NPRM also does not acknowledge that while PCAF standards may exist for six asset classes, reliable data for these asset classes does not. In addition, where data is available for asset classes, the information financial registrants receive may be based in part on estimated information. We believe these realities necessitate that if Scope 3 emissions disclosures are included in the final rule, they should be subject to a materiality test consistent with existing U.S. Supreme Court definitions and interpretations and should be phased in as suggested above.

B. Scope 3 Emissions Disclosures – Franchises

The NPRM indicates that required Scope 3 emissions disclosures would encompass emissions from "franchises." We respectfully request that any final rule clarify that "franchises" does not include independent insurance agents, brokers, or financial advisors. Such individuals operate independently of insurance issuers, and insurers have no control over the operations of independent distribution channels. Thus, we believe it would be inappropriate and impractical to require insurers to secure GHG emissions information from such sources.

XII. Compliance Date and Retroactive Compliance Issues (Questions 56-57)

The NPRM suggests that the final rule may include an effective date of December 2022, with the first year of reporting being 2024 for large, accelerated filers, with data from 2023 (assuming a calendar-year reporting schedule). Given the complexity and granularity of the reporting required, we believe that this implementation timeline is too aggressive and should be delayed in any final rule. Further, our ability to comply with the requirements as proposed will be heavily influenced by our ability to obtain information from third parties (e.g., vendors, the issuers of securities insurers invest in, etc.) that will themselves need time to develop the capability to report required information. In light of this dependency, in addition to phasing in the disclosure requirement based on registrant size, we also believe the phase-in should vary by industry, with a longer phase-in period for financial services registrants and for the insurance sector in particular.

Additionally, the NPRM stipulates that financial statement metrics must be disclosed for the current year, and any historical year included in consolidated financial statements. For the first year of reporting, this could include data from years before the rule is final, for which registrants have not collected data. To avoid requiring disclosure before data is practically available, among other issues, we support disclosure no earlier than three years from the implementation date.

Additionally, we support a delayed timeline for any investment reporting (e.g., data for Q4 would not be available in time for end of the following Q1 reporting). We also suggest delayed reporting for Scope 3 emissions to allow time for third-party data to be received/reported by registrants. Finally, we urge the SEC to include in any final rule the option for a registrant to decline to provide data and explain, as in the case of mortgage lender registrants, given that borrower property owners are not required to provide data.

XIII. Insurance-Specific Issues: Property and Casualty (P/C) Insurance Company Disclosures

As discussed above, the NPRM would require the disclosure of several categories of information, including climate-related risks up and down the "value chain" of a registrant, climate-related impacts, including on a registrant's financial statements, and climate governance, risk management and mitigation strategies. Such disclosures pose very serious practical and competitive problems for insurers.

A. Reliability and Liability Concerns.

As discussed earlier, P/C insurers are in the business of protecting policyholders from acute weather events and deeply understand the impact of the increasing intensity and severity of such events. However, insurers do not distinguish between acute weather events and events specifically attributable to climate change. Any means of doing so would be variable among insurers.

Even if there were a method with scientific consensus to distinguish between climate-related events and weather events, it would be virtually impossible to quantify the percentage of

insurance losses specifically attributable to climate change, as currently required by the NPRM. For example, a hurricane may cause a current-year financial impact to a P/C insurer because of the combination of population patterns, cost of home repair, details of home-owners coverage, local building codes and infrastructure, local emergency response, and multiple other interconnected factors. In the absence of specific guidance regarding how to define a climate-related event and quantify the percentage of claims payouts and other costs specifically attributable to climate change, P/C insurers will be required to define these terms themselves, exposing them to liability and other risks. Additionally, from our perspective as institutional investors, such disclosures would not be sufficiently reliable to aid investors in decision-making.

B. Competitive Concerns.

Because P/C insurers manage their risks through a variety of means, including contract terms, decisions on where to underwrite insurance, and pricing, asking insurers to disclose zip-code level data on climate risk, climate-related risk impacts, and climate risk mitigation strategy would require them to reveal business confidential information that would pose competitive concerns and potentially antitrust concerns.

Further, as noted earlier, we believe that at a minimum, the final rule should provide a safe harbor from liability for any company-defined terms, including climate-related risk, climate-related impact, and acute weather event, among others.

C. Unavailability and Unaffordability of Insurance Should Not Be Assumed to Be a Material Risk.

The NPRM requires that a registrant disclose a likely loss of insurance coverage or an increase in premiums that will materially affect its business on Proposed Item 1502(a).[6] While some commenters have speculated that climate change will result in a broad disruption in the availability and affordability of property insurance, we respectfully disagree. We caution against starting from this presumption and further believe that requiring such disclosures in Proposed Item 1502(a) could inadvertently undermine the public's confidence in the value of insurance and the sector's ability to help individuals and businesses manage risks they are exposed to. We therefore suggest that any final rule should remove any requirement that implies that registrants should assume that insurance will be unavailable and/or unaffordable.

XIV. Insurance-Specific Issues: Life Insurance Products Should be Exempted (Question 175)

The NPRM applies to SEC registrants, including foreign private registrants, business development corporations (BDCs), and real estate investment trusts (REITs). Additionally, the NPRM describes the scope of its applicability by reference to entities filing specific forms with the SEC such as Form S-1 or Form S-3. The proposed rule would therefore apply to certain SEC-registered non-variable life insurance and annuity products, such as registered index-linked annuities (RILAs), contingent deferred annuities (CDAs), and registered index-linked universal life insurance policies that are not eligible for the SEC's annuity or life specific filing forms (i.e.,

[6] *See supra,* note 5, pg. 102.

Forms N-4 and N-6). This would subject otherwise non-public companies to the proposed public company disclosure requirements. We believe this is an inappropriate outcome and beyond the scope of what the SEC likely intended. Requiring such extensive and granular disclosures around such products would increase their cost, create distortions between SEC-registered and non-SEC-registered products, and would not serve the SEC's stated purpose of providing investors with decision-useful information. We suggest that the SEC clarify in any final rule that the rule's requirements do not apply to insurance product filers that do not otherwise file 1934 Act public company reports.

XV. Conclusion

We appreciate the SEC's goal of providing investors with consistent, comparable, and decision-useful information on all material risks, including climate-related risks. Thank you for the opportunity to provide these comments and for your consideration of our views. We look forward to continued engagement as the rulemaking process unfolds.

Sincerely,

Bridget Hagan
Executive Director
The Insurance Coalition