COLORADO PERA

June 17, 2022

VIA EMAIL

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

Re: File No. S7-10-22, Enhancement and Standardization of Climate Related Disclosures for Investors

Dear Madam Secretary:

On behalf of the Colorado Public Employees' Retirement Association (Colorado PERA or PERA), thank you for the opportunity to file this public comment regarding the U.S. Securities and Exchange Commission's (Commission or SEC) proposed rules on climate-related disclosures (proposal). PERA is generally supportive of the momentum toward disclosures that substantively enhance investors' understanding of how registrants are assessing and managing financially material climate-related risks and opportunities. We are encouraged that the SEC has so carefully deliberated how companies can fulfill their responsibility to make adequate risk disclosures to investors when it comes to climate-related impacts to business, and that the Commission has modeled its proposal after the Taskforce for Climate-related Financial Disclosures (TCFD) Recommendations, which we believe are a key component of best practice in such disclosures globally. We appreciate the Commission's focus on improving consistency, comparability and reliability of such disclosures, as we agree these can support decision-useful reporting to investors.

However, we are not convinced that the best way to achieve these is for the SEC to require all companies to report specific aspects of climate-related risk, regardless of financial materiality. While we understand that the SEC's authority is not constrained to rulemaking based on financial materiality, we are investors making decisions that can affect the retirement security of hundreds of thousands of public servants to whom we owe fiduciary duty. Therefore, PERA's obligation is to focus on what is reasonably likely to impact the financial value of our investments through time. It is from this perspective as an investor with financial interests that we offer comments to the SEC. We respectfully ask the Commission to reconsider aspects of its proposal in order to better align the rulemaking to existing material risk disclosure rules, while encouraging robust transparency on climate-related impacts to business.

Colorado PERA prioritizes financial materiality and considers climate-related risks and opportunities in active investment and proxy voting decisions, where expected to have an impact on long-term financial performance. (Applicable to request for comment question sets 2, 3, 4, and 18).

Colorado PERA is the state's largest public pension plan, managing approximately $66 billion in assets under obligation to enhance the retirement security of nearly 650,000 current and former public employees and their beneficiaries. In fulfillment of our fiduciary duty, we prioritize the maximization of risk-adjusted returns to the portfolio in pursuit of the long-term financial sustainability of the Fund. Within the parameters set forth by the PERA Board of Trustees (PERA Board) to achieve our investment objectives, PERA considers financially material factors when making investment decisions in our public and private market portfolios.[1] This includes the integration of financially material climate-related information, as well as other financially material considerations with respect to matters that may be labeled under the environmental, social, and governance (ESG) umbrella, as applicable. At the same time, not all climate-related information is something that we believe is financially material. And what may be financially material to one industry or company is often irrelevant to other industries or companies.

The PERA Board's philosophy regarding ESG integration is described in its *Proxy Voting Policy,* which acknowledges that "financial materiality is dynamic, subjective, and may vary by investment. By focusing on materiality… we believe we can direct PERA's resources toward issues that are most pertinent to the expected risk-adjusted returns of our investments, in line with our fiduciary duty."[2] Regarding disclosure of climate-related impacts to a public company's business, PERA's *Proxy Voting Policy* states:

> *Material climate risks and opportunities that may impact long-term shareholder value should be adequately disclosed to investors. PERA encourages companies to use standardized metrics for financially material climate-related disclosure, [such as SASB Standards]. Such disclosures may also be integrated within the TCFD framework, which can provide further information as to a company's environmental impacts… PERA will generally support well-targeted proposals seeking disclosure of financially material climate-related metrics, [such as through SASB Standards].*[3] [4]

This policy is intended to guide PERA staff when deciding how to vote on proxy ballot proposals that pertain to climate-related disclosure. Additionally, PERA's investment staff may consider various aspects of material climate-related risks and opportunities disclosed by companies as pieces of the mosaic of information we take into account in our fundamental analysis and security selection in actively managed public market portfolios. In our private market investments, we may likewise consider financially material aspects of climate risk and opportunity management identified and disclosed by General Partners as pertinent to their fund management. In these

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[1] *See* https://www.copera.org/files/cde467d81/Investment+Policy+1-22.pdf

[2] Colorado PERA, Proxy Voting Policy, (Effective February 1, 2021), proxy_voting.pdf (copera.org)

[3] *Id.*

[4] PERA's *Proxy Voting Policy* is supportive of standardized metrics for financially material climate-related disclosure, "such as those prescribed by SASB." In this comment letter we summarize the Policy's reference to SASB as the existing language does not take into account SASB's reorganization into The Value Reporting Foundation, and its subsequent reorganization into ISSB. However, the SASB Standards continue to exist at the time of this comment submission, and we refer to them in this letter accordingly.

ways, PERA acknowledges that climate change can present real and potential impacts to competitive advantages, profitability, and investor returns through physical effects on real assets caused by extreme weather events (*i.e.*, physical risks), as well as through effects on a company's success in the transition to a lower carbon economy resulting from changes in government policy, technological innovation, and supply and demand functions (*i.e.*, transition risks). By evaluating climate impacts through a lens of what we believe is financially material on an investment-by-investment basis, we recognize that although climate change is ubiquitous its effects can be diverse and complex, passing through various channels of risk classifications and presenting a myriad of market opportunities to each unique business.

Where such climate-related effects are reasonably expected to affect, or have already affected, a company's financial position and performance, we view those as material. Therefore, PERA expects such real or potential economic impacts to a U.S. company's business to be adequately disclosed to investors under existing securities laws governed and enforced by the SEC. Climate-related disclosures that do not demonstrate corporate management's identification, oversight, and impact assessments of financially material risks and opportunities to its business, including those that demonstrate the inverse (*i.e*., impacts of business on the environment), may be disclosed by companies at their discretion and in response to various stakeholder interests. These interests may lie beyond the interpretation of what we believe is financially material in our investment decision-making. While we acknowledge that disclosures beyond financial materiality may benefit some stakeholders (including some investors that may have objectives beyond long-term investment performance in their investment strategies), we remain vigilantly focused on what we believe to be financial materiality in our advocacy of appropriate climate-related disclosures because such focus enables us to meet our fiduciary duty to PERA members.

Under PERA's stewardship of plan assets, we have been engaged in advocacy in support of financially material disclosures pertaining to sustainability matters through participation in advisory groups formed by independent standard setters, as well as through policy advocacy.[5] PERA submitted a letter in June 2021 to the SEC in response to then Acting Chair Lee's solicitation for public comment on whether and how the SEC should regulate climate-related and other ESG disclosures. We supplicated the SEC to: 1) "…fortify its existing material disclosure guidance, review, and enforcement before pursuing new or expanded regulation pertaining to specific underlying reporting"; and 2) "begin with financially material aspects that have been identified by independently-led and market-based standards and frameworks in order to preserve its focus on investor interests if the Commission decides to pursue climate-related disclosure regulation at this time."[6] We reiterate and expand upon these requests in response to the SEC's March 2022 proposed rules regarding climate-related disclosures below.

[5] *See* PERA's *2021 Investment Stewardship Report* at https://www.copera.org/files/e281fe352/5-169.pdf

[6] Colorado PERA, Public Comment, Request for Input on Climate-Related Disclosures (June 11, 2021). https://www.sec.gov/comments/climate-disclosure/cll12-8911390-244313.pdf

Colorado PERA respectfully requests that the SEC apply a financial materiality limitation to each of the disclosure requirements it plans to finalize from the proposal. (Applicable to request for comment in question sets 1, 3, 18, 59, 76, 77, and 98).

We appreciate that the SEC has spent considerable time and resources on this proposal in response to various stakeholder interests, and understand that to indicate the SEC intends to pursue establishing its own standards. If so, we urge the SEC to revise the proposal to use the same materiality limitation in each of its new climate-related disclosure requirements. We believe this would yield more decision-useful disclosures to a reasonable investor while reducing cost burdens to registrants.

PERA believes that under material disclosure obligations companies should diligently consider all risks and opportunities that are likely to, or do have, impacts to its business strategy, operations, and financial health. By disclosing material risks and opportunities, as well as its capacity to manage them, a company shares pertinent information that facilitates efficient capital allocation by reasonable investors. We believe materiality limitations should apply to each of the proposed climate-related disclosure requirements, and that the determination of materiality should be left with registrants. Otherwise, one-size-fits-all disclosure requirements that are not considerate to materiality may lead to more boiler-plate language in corporate disclosures as they subdue the need for companies to think critically and disclose material business-specific risks. We believe this is the same for climate-related risk and opportunity management.

In its March 2022 proposal to enhance and standardize climate-related disclosures, the Commission demonstrates attentiveness to comments from Colorado PERA in 2021 in that it provides some clarity to how the SEC approaches materiality. For example, the proposal explicitly states the Commission's definition of materiality is aligned with U.S. Supreme Court interpretations that "a matter is material if there is a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities or how to vote."[7] As an institutional investor with a fiduciary duty to manage the Colorado PERA trust fund to ensure the retirement security of the members and beneficiaries we serve, we appreciate the SEC clarifying its stance on materiality under this definition. We agree with this definition and use it when making investment decisions on behalf of the members to whom we owe fiduciary duty. As such, we believe this definition should underpin disclosures of material matters required by the SEC.

However, we find inconsistencies in the promulgated rule regarding how the Commission upholds its stated materiality interpretation. The Commission's inconsistent treatment is evident in the inclusion of a materiality limitation in some, but not all, requirements for registrant disclosure therein. One example of this is found in the proposed mandate in Regulation S-X Article 14-02 that registrants report on their consolidated financial statements climate-related impacts where those effects equal more than one percent of the total reported line items. While we value the

[7] *See* page 69 of "The Enhancement and Standardization of Climate-Related Disclosures for Investors." https://www.sec.gov/rules/proposed/2022/33-11042.pdf

focus on financial impact and agree with placement of such disclosures in the proposed regulatory filings, we note that a one percent threshold is very low. Companies typically report using a higher threshold as a rule of thumb for financially material determinations. We believe the proposed one percent threshold could create instances where estimation or rounding errors lead to disclosures deemed material where they otherwise wouldn't be. The application of an arbitrary ratio standard appears to remove the need for companies to think critically about responding to investors' need for material information because it dictates what is and is not material with a one percent threshold of pre-specified quantitative information. We would rather companies think critically about the risks and opportunities facing their business when making disclosures to investors.

In another example, under proposed Regulation S-K Item 1504(b) all registrants would be required to report their Scope 1 and Scope 2 greenhouse gas (GHG) emissions as defined under the GHG Protocol. However, under proposed Item 1504(c) only those registrants to which Scope 3 emissions are deemed material, or which have stated GHG emission reduction targets or goals that include Scope 3 emissions would need to disclose those. We agree that Scope 3 emissions disclosures should not be required of all issuers, and appreciate the Commission's consideration to cost impacts (especially for smaller reporting companies) and the difficulty of assessing these emissions in the proposal. However, the difference in treatment between different Scopes raises more concern around material disclosures.

Why would the SEC mandate some emissions disclosures under a materiality limitation, while mandating others without such limitation? If it is to relieve registrants of cost burdens, is there a different way the Commission could do so without compromising its traditionally held position on materiality? Should not the Commission apply the same materiality limitation to all aspects of regulated securities risk disclosure? Does the SEC's requirement of some blanket disclosures declare those material while leaving other business-specific disclosures open to interpretation of materiality? If so, is the Commission removing the responsibility of materiality determination from registrants for select aspects of its disclosures? Is this at odds with the Commission's previous determination that materiality judgments "can properly be made only by those who have all the facts"?[8] Uncertainties around these aspects of material identification and reporting in the Commission's regulation of climate-related risk disclosure could have far reaching consequences for future rulemaking, if not present challenges to the rules as proposed in the near term.

Therefore, PERA respectfully reiterates our request that the SEC amend the proposed rules to apply the materiality limitations under its stated definition to each of its climate-related disclosure requirements. This would leave the responsibility to determine materiality with each registrant, which is presumed to be the only entity in possession of all the facts of its business that would be necessary to make such determinations. Registrants would then be required to report all of the oversight, risk identification processes, adaptation and mitigation strategies, and metrics thoughtfully outlined in the proposal *if and where material* to its specific business, operations, and financials – and thus, to investors such as PERA. Together with business-specific disclosure of impacts such as supplier risks, evolving customer demands, interest rate policy changes,

[8] U.S. Securities and Exchange Commission, Staff Accounting Bulletin No. 99 – Materiality, 17 C.F.R. §211, Subpart B (Aug. 12, 1999).

regulatory changes, and other matters, material climate-related risk and opportunity disclosures would provide investors with a more robust understanding of whether and how a company incorporates present and projected impacts into its risk and financial performance management frameworks.

PERA believes the addition of the materiality limitation to each of the proposed disclosure requirements would be expected to: fortify and complement existing SEC reporting mandates by maintaining a focus on singular, financial materiality; help registrants more thoughtfully deliberate and articulate which aspects of its enterprise value are significantly impacted by physical and transition risks presented by climate change; and alleviate costs for collecting and reporting data and analyses that are not material to a registrant's risk oversight and management, while necessitating the allocation of appropriate resources to risk management and reporting of material impacts of climate change on a specific business.

Because the materiality limitation would be applied to each aspect of new climate-related disclosure, investors would expect to see decision-useful disclosures across companies of different sizes and industries, resulting in a more comprehensive picture of the climate risk management landscape in the market. If a particular item under this scheme is not material to a company, the registrant would not incur costs for reporting that falls beyond the scope of its considerations to being a going concern in competitive markets. With materiality underscoring each requirement in the proposal, business-specific and, therefore, decision-useful information would be expected to be reported, thus alleviating the one-size-fits-all concern.

Colorado PERA recommends the SEC consider referencing independently developed standards for compliance with mandatory disclosure requirements. (Applicable to question sets 3, 15, 135, 176, 183, 186, 187, and 189).

The potential for peer comparison of financially material matters may be weakened in one-size-fits-all disclosure standards that do not account for differences in core business lines. Standards that are not adjusted for distinct operations across various industries could also incur unnecessary costs for registrants to comply while reducing usefulness to investors' fundamental analysis. This may result in lower returns to investors, and jeopardize the very consistency and comparability the SEC seeks to enhance through its proposal.

As the SEC acknowledges in its proposal, market participants have grappled with identifying which non-financial metrics and discussions are most relevant to business and several independent standards have emerged, resulting in reporting fragmentation globally. This disclosure fragmentation is expected to be largely resolved through the creation of the International Sustainability Standards Board (ISSB) under the IFRS Foundation. We believe the ISSB's focus on the impacts of climate change to a company's enterprise value upholds financial materiality as the foundation for disclosure. TCFD recommendations *together with* industry-specific standards developed by the former Sustainability Accounting Standards Board (SASB) may promote best practice for critical thought and divulgence of financially material climate impacts on a company's unique business, operations, and financial position as business evolves.

These two schemes are expected to form the basis of the ISSB's Sustainability Disclosure Standards within the existing IFRS reporting requirements, which have been adopted or permitted by regulators in approximately 120 countries.[9]

The widespread support for the ISSB and its progress toward global, market-based standards includes direct support from the International Organization of Securities Commissions (IOSCO) through its participation on the ISSB's Technical Readiness Working Group (TRWG), and indirect support from the SEC via its participation in IOSCO. The SEC should be cognizant of these still-fluid international developments, and seek to avoid unnecessary inconsistencies in what appears to be a growing market consensus that could unintentionally limit, rather than improve, consistency and comparability in financially material disclosures for universal owners.

We thank the Commission for articulating its attention to these developments by explaining its indirect involvement through IOSCO in the ISSB's TRWG. We acknowledge that the SEC has been involved in these developments in that regard and is aware of the dependence on TCFD recommendations in the TRWG's recommendations to ISSB. We also recognize that the SEC shows a desire to align with these international developments by basing its own proposal on the TCFD recommendations. However, in light of the early stages of market-based standards through the independent standard setters such as the ISSB, PERA believes it is still premature for the SEC to declare alignment with evolving best practices for climate-related disclosures and to mandate attestation of reporting metrics that have not yet been fully vetted in the market.

PERA agrees with the Council of Institutional Investors (CII) that "longer term, the SEC should consider establishing criteria to identify an independent, private sector standard setter or setters to develop industry specific sustainability standards and participate in reviewing, updating, improving, and augmenting existing sustainability disclosures."[10] We believe independent standard setters have the resource dedication and established processes to support the development of market consensus on the most beneficial reporting requirements. Use of independent standards would also be expected to meet both traditional and non-traditional investor needs, and improve their capital allocation. This is due to the dynamic nature of independent, market-based standards, which are generally free from interference. The ability to confer through due process on which management and financial information is most decision-useful naturally depends on a shared sense of objectives in decision making. In the event the Commission pursues the use of independent standard setter(s), we believe it can and should oversee appropriate independence, funding and operations of third-party standard setters by ensuring it is committed to the intended beneficiaries of disclosures – investors.

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[9] *See* https://www.ifrs.com/ifrs_faqs.html#:~:text=Approximately%20120%20nations%20and%20reporting,such%20conformity%20in%20audit%20reports.

[10] Council of Institutional Investors, Public Comment, Public Input is Welcome on Climate Change Disclosures (June 11, 2021).

We also note that some investors may have objectives that are outside financial materiality and include impact objectives pertaining to the effects of business on society or the environment in addition to, or instead of, objectives pertaining to these external effects on business. This reality is how fragmentation in standards referenced by the SEC in its proposal has come to be. Different investors may have different objectives, which necessitate different standards for decision-useful information.

Additionally, non-investor stakeholders (*e.g.*, a disclosing company's customers) may have other interests and information desires, further complicating the disclosure standard landscape. Companies may respond to these disparate interests by aligning their reporting with independent standards that they believe best help them articulate the information pertinent to their investors, as well as other stakeholders. Voluntary adoption of reporting standards can be a mechanism for a company to signal its competitive advantages in the market. In turn, these disclosures may give investors and other stakeholders information they need to allocate resources in line with their unique aims. Where companies align their reporting with standards that focus on financial materiality of non-traditional factors, such as those being developed by ISSB, it would follow that many investors would view this as a competitive advantage because they would better have their needs met for informed decision-making. In turn, this would lead to capital allocation more aligned with the reasonable investor's objectives, and lower costs of capital for the companies best able to attract it.

As an alternative to mandating climate-related disclosures ahead of pending international standards, PERA believes the SEC could refer registrants to existing independent standards rather than establish its own (even if those are based on aspects of existing independent disclosure schemes). For example, the IFRS Sustainability Disclosure Standards are in the early stages of development, yet already set to be based on TCFD Recommendations and SASB Standards.[11] If the SEC were to permit registrants to disclose under such globally recognized schemes, the intended disclosures in the proposed rule would be met (*i.e.,* registrants could be encouraged to report under TCFD Recommendations on which many aspects of the proposal is based), and further fortified by industry-specific disclosures that facilitate material considerations and reporting to investors based on the underlying business (*i.e.*, registrants could report under SASB Standards to provide business-specific disclosures pertaining to climate change impacts on enterprise value).

By permitting registrants to disclose under existing independent frameworks such as those forming the basis of emerging international standards, the SEC may be better positioned for continued enforceability as global consensus gains momentum around these. We believe this approach could also facilitate better comparability and consistency of disclosures made by foreign private issuers and domestic registrants because many non-U.S. companies are expected to report under the still developing ISSB standards where their jurisdictions of domicile require or permit IFRS conformance. This would also be expected to better facilitate assurance practices for non-traditional metrics, which we believe is also premature at this point given the lack of market

[11] https://www.ifrs.org/news-and-events/news/2022/03/issb-communicates-plans-to-build-on-sasbs-industry-based-standards/

unison on standardized metrics in accounting for these factors. Additionally, the SEC could consider requiring such disclosures be made in English, conform to XBRL tagging requirements, and require identification of the alternative reporting scheme to augment accessibility.

Doing so would not only be consistent with the Commission's approach to other material disclosure regulation, it would also allow for continued support of standardized metrics and templates that have received international acceptance through due process and extensive market consultation. This would in turn be expected to make the SEC's rules more dynamic in that by referencing, rather than developing, standards for compliance, the SEC is alleviated of the burden of revising those standards as evolving market dynamics necessitate different disclosures about material risks and opportunities through time. Furthermore, referring to internationally recognized standards could help reduce incremental costs and operational burdens to firms in formulating compliant reports under multiple jurisdictional and best practices standards.

PERA maintains that decision-useful disclosures should communicate material information about risk and opportunity management that is business-specific. Understanding systemic economic risk facilitates a macro understanding of market conditions, but it is the idiosyncratic considerations for long-term success in a company's operations, strategy, and financials that help active investors assess one opportunity relative to the full opportunity set. Where standards for disclosure are market-based and allow reporting entities to articulate the unique aspects of their business and financials that investors should be aware of when making their decisions, standardization can lead to more decision-useful reporting by enhancing comparability and consistency in what is reported. Therefore, we are supportive of standardized disclosure metrics and templates that take into account both systemic and idiosyncratic risks and opportunities.

We respectfully ask the Commission to reference, rather than establish, standards that uphold financial materiality while enhancing a reasonable investor's understanding of climate-related risks to a registrant's business. We foresee reference to ISSB standards being the highest degree of market consensus at the intersection of climate risk and financial materiality, but at this stage reference to TCFD recommendations for universal, and SASB standards for industry-specific, disclosures would be welcome in place of one-size-fits-all SEC-established standards for climate-related disclosures.

Ultimately, PERA believes financially material disclosures drive efficiency, competition, capital formation, transparent engagements, and investment opportunities. If companies desire to be going concerns, outcompete peers in their respective markets, and attract and retain investors while keeping costs of capital low, they should be focused on profitable strategies within dynamic market contexts that adequately account for market risks and opportunities, and appropriately disclose those to investors. When investors have decision-useful information about how companies are managing these aspects of business and how management accounts for them over different time horizons, investors make better capital allocation and investment decisions. Therefore, any financially material risks and opportunities that a company considers in developing and executing its business strategies would be useful inputs when taken with the whole mix of information available, including those risks and opportunities presented by Earth's changing climate and the reporting firm's economic response to such risks and opportunities.

In closing, we again thank the SEC for its attention to material climate-related risks and opportunities. On behalf of the public employees we serve, we appreciate the Commission's consideration of our perspective as a fiduciary acting in the financial interests of hundreds of thousands of beneficiaries.

Sincerely,

Ron Baker
Executive Director
Colorado Public Employees' Retirement Association