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OFFICE OF THE SECRETARY

June 1, 2022

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

Re: File Number S7-10-22: The Enforcement and Standardization of Climate-Related Disclosures for Investors

Dear Ms. Countryman:

What follows includes my comments in the captioned matter. On March 21, 2022, the Securities and Exchange Commission ("SEC") issued proposed rules called the Standardization of Climate-Related Disclosures for Investors ("Proposed Rules"). The ostensible purpose is to standardize the disclosure of climate-related risks to business. These comments will show that the Proposed Rules are not workable, do not address in a business-like fashion the complete array of risks associated with climate change and extend beyond the SEC's traditional role as watchdog for securities disclosure. The Proposed Rules do not operate in the interest of investors and impede capital formation.

The Proposed Rules will require registrants to disclose information about climate-related risks that are reasonably likely to have a material impact on business or financial statements. They also set greenhouse gas disclosure metrics to help investors assess those risks. The Proposed Rules concentrate on external risks to the business from climate-induced events and conditions, called physical risks, and what is called transition risk – the ability of the registrant to meet greenhouse gas emission requirements and transition to a carbon free economy. Physical risks have always been with us and now take on a heightened importance, but the SEC does not assess the newly-created, incremental physical risks associated with climate change. Risk management is about probabilities. But instead of discussing how the probabilities of incremental physical risk operate, the SEC leaves this up to experts who themselves have no coherent data for projecting these incremental physical risks.

The transition risks manifest themselves in a set of mandatory disclosures of greenhouse gas emissions. The Proposed Rules do not consider the risks to energy availability presented by forced adoption of unreliable green energy. Similarly, if bad climate actors are forced from the market, this affects the survivors. But this type of dynamic interactive analysis does not appear in the SEC's thought process. Of paramount concern is reliability of supplies for green energy production. The SEC says nothing about the material geopolitical risks associated with green energy. For example, China accounts for over 70% of the raw materials required for the production of solar cells. Registrants seeking to migrate to green energy face material risks associated with inevitable trade friction with China (which is mounting). Yet nowhere do the Proposed Rules consider these risks.

The SEC's data sources are highly skewed and largely ignore affected registrants. The 1,068 footnotes that accompany the Proposed Rules mostly cite authority from academia and large segments of the money management community. In addition to managers with ESG and social justice aims, there are passive asset allocators such as Black Rock, Vanguard and State Street and activist public employee pension funds from California. Underrepresented or absent are the actual industries that must submit to the rules. The only place energy and industrial concerns are given any authoritative weight is in the discussion of what registrants can expect to pay third party consulting firms for climate measurements and advice.

At present, there are no registrant-specific Federal climate change laws on the books and there are none in the offing. In its guidance, the SEC frequently cites the Paris Climate Accords, but these are goals set by sovereign signatory nations to attain certain global temperature goals by means of reducing greenhouse gasses in aggregate. The details of how the nation states do this are left for these nation states to complete. And this has not been done in America. There is no present consensus on a target date for a carbon-free economy. For some it is 2050 and for others, 2040. No matter the legal requirements, the activist institutional investors and their passive asset allocator allies, which control trillions of dollars in assets, will push for these changes through divestitures. The SEC will facilitate these ambitions by forcing registrants to make disclosures designed to attract criticism of a purely political or ideological nature, notwithstanding any registrant's compliance with existing law. The Proposed Rules therefore do not operate in the interest of investors and impede capital formation.

The purpose of the rules is to establish consistent standards for disclosure of climate-related risks and their financial consequences, which will affect investment and voting decisions. Standardized disclosures are also intended to eliminate instances of greenwashing. But the SEC neither defines greenwashing nor gives any actual, real-world examples. Greenwashing is diffuse and undefined. The Proposed Rules justify and validate divestiture of fossil fuel investments and expose carbon unfriendly industries. This replaces risks to the enterprise with ideological targeting.

Registrants must disclose climate-related expenditures to increase the resilience of assets or operations at risk or otherwise reduce the future impact on business operations of severe weather events and other natural conditions. This means registrants must discuss the effects of decarbonization. A difficulty with decarbonization analysis is it requires registrants to anticipate future laws and technology. Although the SEC allows certain forward-looking statements, its disclosure regimes are generally driven by disclosure of existing known facts. Both the legal climate and technology are unknown and changing rapidly. In this respect, the SEC makes unsupported assumptions as to the type of future legal regime facing registrants pertaining to climate change. For example, the SEC explains that greenhouse gas emissions can be used to evaluate progress toward attaining net zero carbon emissions. It does this even though there is no legal mandate for net zero emissions as to any specific registrant or any specific target date. In doing so, the SEC shows that it has been unduly influenced by the comments already submitted by ESG funds, passive asset allocators and activist pension funds.

Central to the operation of the new rules is the reporting of greenhouse gas emissions. Registrants must disclose direct and indirect emissions. The rules divide these into three categories: Scope 1, Scope 2 and Scope 3 emissions. Scope 1 includes direct emissions by the registrant. Scope 2 includes indirect greenhouse gas emissions arising from the registrant's purchase of energy from third parties. Scope 3 includes remaining greenhouse gas emissions generated by third parties in the registrant's upstream and downstream value chains. One example of this third category is the transportation of goods used by the registrant.

The interaction of these reports is complex, and very likely the SEC has not thought this through. Instead, the SEC is deferring to greenhouse gas experts who have their own agendas. Here is one example: A trucking business decides to replace its fleet with electric vehicles, reducing Scope 1 emissions. But this will increase Scope 2 emissions through incremental consumption of electricity to power the trucks. How do we measure this increase? The answer depends on how green the trucking concern's electricity providers are. The trucking concern doesn't control whether the electricity providers burn coal or rely on wind power. So the trucking concern cannot really do much to control the spike in Scope 2 emissions.

Scope 3 emissions present large problems. They force registrants to obtain data from suppliers and even customers. Registrants are not legally or contractually entitled to this data. Boilerplate reporting clauses will assuredly appear in contracts, but many suppliers who do not belong to the S&P 500 will not have the resources to compute this information. And they are neither legally nor contractually obligated to do so. Overseas suppliers from jurisdictions with no climate requirements will find these even harder to address. This would then raise the question whether a registrant must audit its suppliers and even customers for accuracy. The SEC has to a degree acknowledged these problems and proposes to defer timing of Scope 3 reporting, to water down liability for inaccurate disclosures and to exempt certain small reporting companies. Also to address some of these problems, the SEC embraces the use of what it calls emissions factors to allow emissions to be extrapolated or derived from economic activity. But this leaves open the question of how the firm forced to use factors will control its destiny in making emissions improvements so cherished by the ESG activist investor community driving the Proposed Rules.

The SEC uses unrealistic examples of how businesses would address Scope 3 emissions. One example is the retailer who generates Scope 3 emissions from customers who drive to its facility and park in its parking lot. The SEC suggests the retailer might close that store and relocate to a place in proximity to public transportation. All of this is suggested without any discussion of the cost or feasibility of such a move. This is a concrete example of the central planning approach now on display by the SEC and the climate activist investors that are driving these requirements. And what happens when customers drive to the store in electric vehicles and public transportation remains on diesel fuel? Central economic planning and its disastrous consequences are on open display in these unrealistic examples. In any case, the SEC furnishes no backup on the scientific validity or logistical feasibility of collecting Scope 3 data. There is also much double counting of emissions because one firm's Scope 2 emissions are another's Scope 1 emissions.

Through the 490 pages of mostly explanatory text, nowhere does the SEC address questions of overseas facilities. There is discussion of whether emissions should be tracked and reported by zip code in the form of a heat map. This question is crucial for multinationals. But because, like all registrants, the multinational must report financial statements in accordance with generally accepted accounting principles, I believe the SEC expects operations abroad would be included in the computation. Which means registrants will face the complexity of gathering this data outside the United States. The SEC is clearer with respect to outsourcing and expressly states any outsourced functions (whether domestic or abroad) should be tracked and reported by the firm that outsources the activity no matter the geographic location. The SEC is clear that multinationals must report outsourced Scope 3 emissions and the rules aim at placing these practices under scrutiny, as they sometimes occur in third world countries that do not regulate carbon emissions. If multinationals are forced to unwind these arrangements or force local third parties to comply, this could materially and adversely affect the multinational's business. But the SEC does not touch on this likely consequence.

Also very important is the SEC's concept of greenhouse gas emissions per unit of economic value. This is intended to allow investors to compare greenhouse gas performance by measuring emissions in relation to revenues, assets or units of production. In this way, investors could compare Coke and Pepsi, GM and Ford, Exxon and Chevron and the like. These measures will, of course vary greatly by industry but activist investors will pay close attention to these metrics, confront management with them and force executive teams to adopt incentives in their compensation packages. One difficulty with these is whether these will be reported by business segment. For example, Coke cannot be accurately compared to Pepsi if Pepsi's snack business is lumped with the beverage business. To the extent these emissions are fixed, these metrics will also favor the large players. Greenhouse gas emissions must be tracked by segment to make any sense. For example, a business with trucking and logistics will have entirely different greenhouse gas profiles as between the two business segments and these must be reported separately to make sense to the analyst.

The SEC discusses goal setting at considerable length. And while it does not require climate goal setting, it encourages it. And if the registrant actually has such goals, it must publish them in rigorous, defined detail including rigorous detail on targets, time horizons and measurement units. Goal setting is problematic for a number of reasons. First, there is no legally-mandated level and merely setting zero emissions by 2050 is fanciful and will not be the responsibility of the management team and board that sets the goals. All will be long gone from the enterprise by 2050. And in businesses run by managers who prize present value, deferral of outlays will be heavily favored. Also, deferred outlays will enable capture of superior, later-developed developed technology. While this does not mean firms should not embark on programs now, the superannuated timelines create natural incentives to defer action. Registrants must explain how they intend to meet goals they set, which will be subject to endless revision as technologies, business considerations and other priorities change. They must also explain each year what they did to reach goals, which may result in institutionalized flailing, and this may actually worsen greenwashing. Why can't the registrant simply say: "this is a long term problem and we are dutifully engaged in watchful waiting?" The SEC also requires disclosure of use of carbon offset credits and renewable energy credits but offers no insights into whether and how these can be attained and at what cost.

Although registrants may rightfully carry a wait and see attitude, this is not the case for ESG activist investors. The SEC notes that institutional investors regard climate risk as one of the most prominent features of their investment decisions. If this is true, why are the managers who run the institutional investors, who have the same training as corporate CFOs, seeing things so differently? Investors like present revenues and deferred expenses, but not when it comes to climate change.

The Proposed Rules have the effect and possibly even the purpose of driving harmful, unnecessary divestitures by use of questionable methodologies. This extends beyond the SEC's traditional role and for this reason the Proposed Rules should either be revised to address the foregoing concerns or discarded altogether.

Sincerely,

Creighton R. Meland, Jr.