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

Re: Comments to Proposed Rule on “The Enhancement and Standardization of Climate-Related Disclosures for Investors”

RPM International Inc. (“RPM”) submits these comments to the rule proposed by the Securities and Exchange Commission (“SEC”) on “The Enhancement and Standardization of Climate-Related Disclosures for Investors” (the “Proposed Rule”). The Proposed Rule would require publicly traded companies like RPM to disclose climate-related risks, greenhouse gas (“GHG”) emissions, possible financial effects of climate change and other information related to climate change. RPM opposes the Proposed Rule, which RPM believes is deeply flawed for the following reasons:

Unacceptable Disregard for Materiality

The Proposed Rule decouples climate change disclosures from the long-standing disclosure regime requiring issuers to discuss matters that are material to investors. As written, there is little linkage between the proposed climate change disclosures and their materiality to investors or even relevance to the company that is required to make the disclosures. Instead, information truly material to investors may now be lost in the morass of extraneous environmental data that would need to be disclosed by issuers pursuant to the Proposed Rule.

Not only could much of the required disclosures be immaterial, but those disclosures may also be highly speculative in nature. As Commissioner Peirce argued in her commentary on the Proposed Rule, “[t]he proposal does not just demand information about the company making the disclosures; it also directs companies to speculate about the habits of their suppliers, customers and employees; changing climate policies, regulations and legislation; technological innovations and adaptations; and changing weather patterns.”

Inappropriately Outside the Purview of SEC

The information sought by the Proposed Rule is much more within the purview of the Environmental Protection Agency (the “EPA”). The EPA, not the SEC, is better equipped to develop a regulatory regime for the collection and dissemination of such information. If nothing else, the EPA would presumably bring subject matter expertise to such action that the SEC simply does not possess.

Disproportionately Burdens Publicly Traded Companies

Further to that point, under the Proposed Rule, public companies would bear the entire weight of compliance while private companies avoid all scrutiny. The heavy burden of complying with the Proposed Rule is likely to decrease the number of public companies, causing harm to our economy. Rather than having the SEC place a disproportionate burden on publicly traded companies, action by the EPA would reach both public and private companies.

Dilutes Current Engagement with Stockholders and Fails to Insulate Issuers from Stockholder Proposals

Issuers like RPM already respond to stockholders seeking environmental and sustainability information. These stockholders are asking for data particular to the issuer and the stockholders' understanding of their investment in that specific issuer (e.g., in sustainability reports). As a result, RPM and other issuers already provide relevant environmental and sustainability information to stockholders as the market demands. Compliance with the Proposed Rule would result in less meaningful disclosure and create significant inefficiencies by diverting management attention away from this valuable engagement with stockholders and potential investors.

Further, compliance with the Proposed Rule would not insulate issuers from stockholder proposals or other similar actions concerning climate change disclosures. Under the disclosure regime created by the Proposed Rule, issuers will continue to respond to their stockholders as they have been, but going forward would also have to devote substantial time and resources to responding to the requirements of the Proposed Rule. For example, compliance with the Proposed Rule would not eliminate the possibility that an issuer may receive climate change disclosure stockholder proposals under Rule 14a-8. At a minimum, the SEC should permit the exclusion of stockholder proposals concerning climate change disclosures under Rule 14a-8 in the event an issuer is in material compliance with the Proposed Rule.

Compelled Corporate Speech Potentially Unconstitutional

The U.S. Supreme Court has made clear that corporations enjoy protections under the First Amendment's freedom of speech clause, but also concluded that the government is subject to lesser scrutiny when requiring companies to disclose "purely factual and uncontroversial information." The Proposed Rule would require disclosure of information that is not purely factual or uncontroversial, and so may run afoul of the protections afforded corporations under the First Amendment.

Slippery Slope for Disclosures Unrelated to Financial Performance

If the SEC is permitted to delink disclosure requirements from materiality for climate change matters as it is attempting to do with the Proposed Rule, it is not unreasonable to expect that the SEC may soon be mandating similar disclosure requirements for other matters causing contemporaneous political fervor yet immaterial to an issuer's financial position. Climate change concerns and other similar topics — like encouraging better labor relations, pursuing better treatment of animals, or protecting abortion rights — should be considered material, and

therefore subject to the SEC’s disclosure regime, “only to the extent they relate to the financial value of the company.”

Underestimated Costs of Compliance

The estimated cost to provide the information required by the Proposed Rule is unreasonably low. RPM wholeheartedly agrees with the 19 Senators who stated in their April 5, 2022 comments to Chair Gensler that “[t]his proposal comes with enormous costs for employers. As described in the SEC’s proposal, public companies would face billions in additional compliance costs to meet the new requirements, which will likely reduce the amount of capital that could otherwise be deployed in the U.S. economy. Investors will face harm, too, in the form of reduced shareholder returns.” In addition to the billions of dollars-worth of direct compliance costs, there will likely be many more billions of dollars spent by public companies dealing with the unintended consequences of the Proposed Rule. For example, public companies may be forced to spend significant dollar amounts and management attention addressing meritless lawsuits based on purported claims about climate change disclosures.

Further, it has recently been reported that the SEC has brought enforcement actions against and imposed fines on companies for their environmental, social and governance-related disclosures, even before the implementation of the far-reaching requirements of the Proposed Rule. If and when implemented, it seems likely that the SEC would bring more such costly actions and impose more such fines against public companies, even those public companies that make the utmost attempt to comply with the Proposed Rule, for whatever the SEC deems may be shortcomings in climate change disclosures.

As another example, it seems unlikely that the full costs of determining and disclosing Scope 3 GHG emissions under the Proposed Rule have been considered. Although the SEC appears to recognize that information about Scope 3 emissions will be much harder to collect than information about Scope 1 or Scope 2 emissions, the costs of collecting such information from upstream suppliers alone is likely to be much more than anticipated. One need look no further than the SEC’s Conflict Minerals Reporting rules to see how the costs of requiring public companies to disclose information about upstream suppliers has significantly outweighed any purported effectiveness of a disclosure regime. RPM has spent hundreds of thousands of dollars on third-party consultants and personnel time to diligently implement processes for its Conflict Minerals Reporting program since the inception of those rules. RPM believes it would be forced to spend many multiples of that amount on engaging third-party consultants and personnel time to implement the processes that would be required to comply with the Proposed Rule.

\Weaponization of Climate Change for Activist Hedge Funds


Finally, the Proposed Rule would provide activist hedge funds with a two-pronged attack against management in the event they deem, or even merely argue, that an issuer’s climate change disclosures are insufficient, particularly if the issuer’s financial returns have suffered because resources have inappropriately been allocated to proposed climate change disclosure regime rather than matters material to investors. Instead of providing certainty for issuers regarding required climate change disclosures and leveling the playing field for long-term investors who may have concerns about the environment and sustainability, the Proposed Rule has the potential to provide another weapon for activist hedge funds focused on short-term financial gains to

mount insurgent campaigns against company management. Those same management teams may be forced to divert their attention to proxy battles rather than responding to the concerns of long-term stockholders, including concerns about the environment and sustainability.

For the foregoing reasons, RPM urges the SEC to withdraw the Proposed Rule.

Very truly yours,

RPM INTERNATIONAL INC.

By: 

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