THE OCEAN FOUNDATION

10 June 2022

Rule-comments@sec.gov
Securities and Exchange Commission

RE: File Number S7-10-22

Dear Securities and Exchange Commission,

We write to provide comments on File Number S7-10-22, the Proposed Rule regarding Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices.

Our comments are below.

Thank you for your time and consideration.

Sincerely,

Mark J. Spalding, President

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2. If adopted, how will investors utilize the disclosures contemplated in this release to assess climate-related risks? How will investors use the information to assess the physical effects and related financial impacts from climate-related events? How will investors use the information to assess risks associated with a transition to a lower carbon economy?

Investors will use the proposed disclosures in a variety of ways: regulatory and physical risk mitigation, business durability, or contribution to a low-carbon world. As the world moves to build back better and greener (and bluer) post-pandemic, there is pressure on investors to be the drivers of change toward a more sustainable economy. Additionally, and perhaps central to even traditional investors, the disclosures will allow for the re-evaluation of corporate and stock

value given disclosed exposures, including infrastructure and investments that may have to be abandoned due to sea level rise, storms, storm surges, droughts, or flooding.

3. Should we model the Commission's climate-related disclosure framework in part on the framework recommended by the TCFD, as proposed? Would alignment with the TCFD help elicit climate-related disclosures that are consistent, comparable, and reliable for investors? Would alignment with the TCFD framework help mitigate the reporting burden for issuers and facilitate understanding of climate-related information by investors because the framework is widely used by companies in the United States and around the world? Are there aspects of the TCFD framework that we should not adopt? Should we instead adopt rules that are based on a different third-party framework? If so, which framework? Should we base the rules on something other than an existing third-party framework?

TOF supports the SEC's reliance in part on the TCFD recommended framework. TCFD is a widely respected disclosure framework, and many registrants comply with all or part of it voluntarily or for disclosures in other countries, as applicable. TOF also supports incorporation of aspects of disclosure requirements developed by the Task Force on Nature-related Financial Disclosures, which take into account important risks related to ecosystem services and natural capital.

9. Should we define "climate-related risks" to mean the actual or potential negative impacts of climate-related conditions and events on a registrant's consolidated financial statements, business operations, or value chains, as proposed? Should we define climate-related risks to include both physical and transition risks, as proposed? Should we define physical risks to include both acute and chronic risks and define each of those risks, as proposed? Should we define transition risks, as proposed? Are there any aspects of the definitions of climate-related risks, physical risks, acute risks, chronic risks, and transition risks that we should revise? Are there other distinctions among types of climate-related risks that we should use in our definitions? Are there any risks that we should add to the definition of transition risk? How should we address risks that may involve both physical and transition risks?

TOF supports the current definition of climate-related risks and the inclusion of both physical (acute and chronic) and transition risks. We would like to propose modifications, as described below.

<u>Definitions should enumerate risks and include ocean-related risks.</u>

Risks related to the ocean should be enumerated for all categories. For example,

- "Acute risks" are currently defined as event-driven risks related to shorter-term extreme weather events, such as hurricanes, floods, droughts, and tornadoes. Elsewhere in the proposed rule, wildfires and heatwaves are mentioned as other types of acute risks. The definition should include those examples, as well as marine and ocean examples: loss of

coastal freshwater supply following a storm, marine heat waves, harmful algal blooms, shifting or die offs of marine resources, acute localized ocean acidification.

- "Chronic risks" are currently defined as risks that the business may face as a result of longer-term weather patterns and related effects, such as sustained higher temperatures, sea level rise, drought, and increased wildfires, as well as related effects such as decreased arability of farmland, decreased habitability of land, and decreased availability of freshwater. The definition should also include increased ocean acidification, loss of coastal vegetation storm buffer, sustained higher ocean temperatures, changes in ocean circulation, shifting or die offs of marine resources, and increased oxygen dead zones in the ocean.

Proposed new category: Amplification risk

We suggest also including a definition of "Amplification risk": the risks created by the implementation of unproven technologies or industries, at times marketed as climate solutions, that could in fact accelerate or intensify changes to our climate, amplifying risk to registrants as well as others. Enumerated risks could include: releasing stored carbon into the atmosphere (for example by disturbing soil or seafloor), eliminating a key climate-related ecosystem service by disrupting a system before it is understood, limiting the ability of soil or ocean to uptake carbon via disruptions to thermodynamics or biological activity, or affecting ocean circulation patterns that heat and cool the earth.

Any of the aforementioned could be catastrophic in terms of acute and chronic physical risks. Clearly, there would also be associated transitional risks in the form of inevitable litigation and potentially enormous legal liability and reputational damage.

To provide two examples:

- Deep seabed mining (DSM) is an activity which has been proposed by at least one registrant. The United Nations Environment Programme Finance Initiative, in a report stating that DSM is not a sustainable investment, notes that "current scientific consensus suggests that deep-sea mining will be highly damaging to ocean ecosystems. Furthermore, the combined potential impacts from mining and other stressors on the marine environment (such as climate change, unsustainable fishing, and pollution) increase the level of uncertainty and may exacerbate disturbance from mining"[1].
- Marine carbon dioxide removal (CDR) is a catch-all term for a set of activities which range from nature-based solutions to mechanical and/or chemical methodologies for ocean-based removal of CO^2 from the atmosphere or the ocean water column. The present state of knowledge on ocean CDR approaches is inadequate, especially considering the complex interactions of ocean physics, chemistry, and biology, as well

[1] Un ted Nat ons Env ronment Programme F nance In t at ve (2022) Harmfu Mar ne Extract ves: Understand ng the r sks & mpacts of f nanc ng non-renewab e extract ve ndustr es. Geneva.

as environmental and social impacts. The CDR concepts that are attempting to enhance or accelerate natural functions, or substitute mechanical and/or chemical systems may cause unintended and potentially irreversible harm to natural systems and coastal communities. Ocean CDR should be researched responsibly, with climate justice and the precautionary principle in mind, to determine whether this technology can help to meet, in a timely way, the global goal of limiting warming to well below 2° C, compared to pre-industrial levels, as established by the Paris Agreement.[2]

An evaluation of the relationship between physical and transition risk is key to describing climate risk, and indicative of registrants' understanding thereof.

The relationship between physical and transition risk is an important one. A physical risk such as sea level rise will, over time, lead to a transition risk related to the inability to ensure coastal property and related property disputes. As a chronic physical risk, sustained ocean acidification in an area could result in the loss of harvest of commercially important shellfish. This would lead to transition risks for registrants with commercially important fisheries in affected areas to be subject to contract defaults, and litigation risk from having to lay off a workforce in what could have been a foreseen event.

This ties into the governance-related proposed disclosures - investors are increasingly concerned about whether a registrant's board and management are sophisticated enough to be thinking through these real-world concerns.

10. We define transition risks to include legal liability, litigation, or reputational risks. Should we provide more examples about these types of risks? Should we require more specific disclosures about how a registrant assesses and manages material legal liability, litigation, or reputational risks that may arise from a registrant's business operations, climate mitigation efforts, or transition activities?

Yes, it is important to define and provide examples of transition risks. Legal liability risks should detail any liability that could be incurred from misrepresentation or false information related to climate risks in a sustainability report, a shareholder presentation, or even a registrant's social media account.

Other risks that should be enumerated are regulatory risks and social license risks.

For example, the proposed deep seabed mining (DSM) industry is dependent on authorization from the International Seabed Authority (ISA), and that authorization is not at all guaranteed. The industry is subject to an existential regulatory risk: the ISA has not even completed a set of regulations by which to govern DSM in areas beyond national jurisdiction. Furthermore, the

[2] https://nap.nat ona academ es.org/resource/26278/Ocean_CDR_2021.pdf; https://www.aspen nst tute.org/pub_cat ons/ocean-carbon-d ox de-remova /

best available science shows clearly that we are 30 years away from having the scientific information needed to even have a baseline understanding of the seafloor and mesopelagic area which would be affected (and consequently could not meaningfully monitor or evaluate industry impacts). Because of this, the industry has an enormous social license risk: a strong and growing body of opposition exists in the form of a call for a moratorium by governments, scientists, civil society, banks, and potential purchasers of the proposed products of DSM.

A regulatory risk can also be the risk associated with relevant jurisdictions promulgating regulations that exacerbate climate risks. For example, there are jurisdictions that forbid the planting of mangroves or other coastal vegetation along their shorelines, despite the fact that such vegetation is proven to directly buffer against storm surges, in addition to sequestering carbon.

11. Some chronic risks might give rise to acute risks, e.g., drought (a chronic risk) that increases acute risks, such as wildfires, or increased temperatures (a chronic risk) that increases acute risks, such as severe storms. Should we require a registrant to discuss how the acute and chronic risks they face may affect one another?

The understanding of how acute and chronic risks affect one another is a key element in any climate preparedness strategy. A discussion of this interplay is crucial for investors to understand climate risk. This ties into the governance related disclosures - investors are increasingly concerned about whether a registrant's board and management are sophisticated enough to be thinking through these real-world concerns.

13. If a registrant determines that the flooding of its buildings, plants, or properties is a material risk, should we require it to disclose the percentage of those assets that are in flood hazard areas in addition to their location, as proposed? Would such disclosure help investors evaluate the registrant's exposure to physical risks related to floods? Should we require this disclosure from all registrants, including those that do not currently consider exposure to flooding to be a material physical risk? Should we require this disclosure from all registrants operating in certain industrial sectors and, if so, which sectors? Should we define "flood hazard area" or provide examples of such areas? If we should define the term, should we define it similar to a related definition by the Federal Emergency Management Agency ("FEMA") as an area having flood, mudflow or flood-related erosion hazards, as depicted on a flood hazard boundary map or a flood insurance rate map? Should we require a registrant to disclose how it has defined "flood hazard area" or whether it has used particular maps or software tools when determining whether its buildings, plants, or properties are located in flood hazard areas? Should we recommend that certain maps be used to promote comparability? Should we require disclosure of whether a registrant's assets are located in zones that are subject to other physical risks, such as in locations subject to wildfire risk?

TOF supports the disclosure of assets that are in flood risk areas.

Areas subject to sea level rise are another example of relevant analogous disclosures. TOF advocates for the consistent use of maps, and for sea level rise specifically recommends NOAA's Sea Level Rise Map (https://coast.noaa.gov/slr/) as a U.S. specific source. Other physical climate risks that correspond with mapped zones include saltwater intrusion.

14. If a material risk concerns the location of assets in regions of high or extremely high water stress, should we require a registrant to quantify the assets (e.g., book value and as a percentage of total assets) in those regions in addition to their location, as proposed? Should we also require such a registrant to disclose the percentage of its total water usage from water withdrawn in high or extremely high water stressed regions, as proposed? If so, should we include a definition of a "high water stressed region" similar to the definition provided by the World Resource Institute as a region where 40-80 percent of the water available to agricultural, domestic, and industrial users is withdrawn annually? Should we similarly define an "extremely high water stressed area" as a region where more than 80 percent of the water available to agricultural, domestic, and industrial users is withdrawn annually? Are there other definitions of high or extremely high water stressed areas we should use for purposes of this disclosure? Would these items of information help investors assess a registrant's exposure to climate-related risks impacting water availability? Should we require the disclosure of these items of information from all registrants, including those that do not currently consider having assets in high water-stressed areas a material physical risk? Should we require these disclosures from all registrants operating in certain industrial sectors and, if so, which sectors?

TOF supports the disclosure and quantification of assets in water stressed regions. When evaluating potential water stress, registrants should also be required to consider, on appropriate and clear timescales, the potential for saltwater inundation to pollute freshwater supplies in coastal areas threatened by sea level rise.

15. Are there other specific metrics that would provide investors with a better understanding of the physical and transition risks facing registrants? How would investors benefit from the disclosure of any additional metrics that would not necessarily be disclosed or disclosed in a consistent manner by the proposed climate risk disclosures? What, if any, additional burdens would registrants face if they were required to disclose additional climate risk metrics?

Investors would benefit from disclosure of additional metrics because they would allow for the re-evaluation of corporate and stock value given disclosed risk exposures, including infrastructure and investments that may have to be abandoned due to sea level rise, storms, storm surges, droughts, or flooding.

16. Are there other areas that should be included as examples in the definitions of acute or chronic risks? If so, for each example, please explain how the particular climate-related risk could materially impact a registrant's operations or financial condition.

Yes. (See also our response to Q.9)

Acute risks should include:

- loss of coastal freshwater supply following a storm and saltwater inundation,
- marine heat waves,
- harmful algal blooms.

Chronic risks should include:

- ocean acidification,
- loss of coastal vegetation storm buffers,
- sustained higher ocean temperatures,
- changes in ocean circulation,
- increased oxygen dead zones in the ocean.

18. Should we define climate-related opportunities as proposed? Should we permit a registrant, at its option, to disclose information about any climate-related opportunities that it is pursuing, such as the actual or potential impacts of those opportunities on the registrant, including its business or consolidated financial statements, as proposed? Should we specifically require a registrant to provide disclosure about any climate-related opportunities that have materially impacted or are reasonably likely to impact materially the registrant, including its business or consolidated financial statements? Is there a risk that the disclosure of climate related opportunities could be misleading and lead to "greenwashing"? If so, how should this risk be addressed?

In order to address the risk that the disclosure of climate related opportunities could lead to greenwashing, any climate related opportunities should be required to disclose their amplification risk. As discussed in our response to Q. 9, amplification risk should include the risks created by the implementation of unproven technologies or industries, at times marketed as climate solutions, that could in fact accelerate or intensify changes to our climate, amplifying risk to registrants as well as others.

21. Should we require a registrant to specify the time horizon applied when assessing its climate-related impacts (i.e., in the short, medium, or long term), as proposed?

Time horizon is a key part of any climate analysis. The SEC should require disclosure of the time horizon being evaluated, with a specific number or range of years so ensure consistency across disclosures.

23. Should we require the disclosures to include how the registrant is using resources to mitigate climate-related risks, as proposed? Should the required discussion also include how any of the metrics or targets referenced in the proposed climate-related disclosure subpart of Regulation S-K or Article 14 of Regulation S-X relate to the registrant's business model or

business strategy, as proposed? Should we require additional disclosures if a registrant leverages climate-related financing instruments, such as green bonds or other forms of "sustainable finance" such as "sustainability-linked bonds," "transition bonds," or other financial instruments linked to climate change as part of its strategy to address climate-related risks and opportunities?
For example, should we require disclosure of the climate-related projects that the registrant plans to use the green bond proceeds to fund? Should we require disclosure of key performance metrics tied to such financing instruments?

If the registration leverages climate-related financing instruments, disclosures should include how the registration qualifies for or complies with guidelines for those instruments, and include supporting documentation.

30. Should we require a registrant to disclose analytical tools, such as scenario analysis, that it uses to assess the impact of climate-related risks on its business and consolidated financial statements, and to support the resilience of its strategy and business model, as proposed? What other analytical tools do registrants use for these purposes, and should we require disclosure of these other tools? Are there other situations in which some registrants should be required to conduct and provide disclosure of scenario analysis? Alternatively, should we require all registrants to provide scenario analysis disclosure? If a registrant does provide scenario analysis disclosure, should we require it to follow certain publicly available scenario models, such as those published by the IPCC, the IEA, or NGFS and, if so, which scenarios? Should we require a registrant providing scenario analysis disclosure to include the scenarios considered (e.g., an increase of global temperature of no greater than 3 º, 2 º, or 1.5 ºC above pre-industrial levels), the parameters, assumptions, and analytical choices, and the projected principal financial impacts on the registrant's business strategy under each scenario, as proposed? Are there any other aspects of scenario analysis that we should require registrants to disclose? For example, should we require a registrant using scenario analysis to consider a scenario that assumes a disorderly transition? Is there a need for us to provide additional guidance regarding scenario analysis?
Are there any aspects of scenario analysis in our proposed required disclosure that we should exclude? Should we also require a registrant that does not use scenario analysis to disclose that it has not used this analytical tool? Should we also require a registrant to disclose its reasons for not using scenario analysis? Will requiring disclosure of scenario analysis if and when a registrant performs scenario analysis discourage registrants from conducting scenario analysis? If so, and to the extent scenario analysis is a useful tool for building strategic resilience, how could our regulations prevent such consequences?

TOF supports using the scenarios published by the IPCC.

Questions 34-41 relate to the Board and Management's treatment of climate-related targets and goals as well as climate-related risks and opportunities.

TOF believes it is of paramount importance that investors are provided with robust information about the sophistication of both boards and management regarding climate risks.

94. Should we require a registrant to disclose its GHG emissions both in the aggregate, per scope, and on a disaggregated basis for each type of greenhouse gas that is included in the Commission's proposed definition of "greenhouse gases," as proposed? Should we instead require that a registrant disclose on a disaggregated basis only certain greenhouse gases, such as methane (CH4) or hydrofluorocarbons (HFCs), or only those greenhouse gases that are the most significant to the registrant? Should we require disaggregated disclosure of one or more constituent greenhouse gases only if a registrant is obligated to separately report the individual gases pursuant to another reporting regime, such as the EPA's greenhouse gas reporting regime or any foreign reporting regime? If so, should we specify the reporting regime that would trigger this disclosure?

The SEC should require registrants to disclose GHG emissions on both an aggregate and disaggregated basis. In one example, carbon - as opposed to aggregate GHG - emissions are key for an understanding of physical and transition risk related to ocean acidification.

101. Should we require a registrant to exclude any use of purchased or generated offsets when disclosing its Scope 1, Scope 2, and Scope 3 emissions, as proposed? Should we require a registrant to disclose both a total amount with, and a total amount without, the use of offsets for each scope of emissions?

Yes, as carbon - and blue carbon - offset mechanisms gain prominence and develop, investors may want information about which offsets a registrant has purchased, under which certification schemes, and an elaboration of any potential associated risks.

Registrants should disclose Scope 1, 2, and 3 emissions with and without accounting for offsets. Only certified offsets should be accounted for or considered (or, at the very least, it is necessary for investors to understand whether offsets are certified). The specific standards and methodologies associated with these projects should be identified. Most standards publish this information, so a link to the actual Project Description published on the registry should be included.

Timeline

TOF applauds the SEC's current timeline for climate disclosures. It is imperative that the Final Rule include a defined timeline.

The science is clear that we, as a planet, are in a race against the clock to reduce our carbon emissions, and we have no time to slow down. Registrants also stand to benefit from quantifying and addressing their climate risks as well as their emissions.

Based on comments to date, many registrants feel the timeline is problematic. TOF would like first to emphasize that the resources to quantify and report emissions are well-developed, and that resources exist to help registrants understand and frame their climate-related risks. It is also worth noting that many of these same disclosures are being or will be required for registrants with ties to different jurisdictions, as countries around the world request further climate disclosures.

However, if the SEC considers modifying the timeline, TOF emphasizes that it is key that the Final Rule have a set timeline for implementation with hard deadlines established at the outset (instead of a Rule that sets preliminary deadlines and leaves further deadlines to be elaborated).

Authority

The Proposed Rule is squarely within the authority of the SEC. TOF agrees with commentators that state that "[t]he SEC has the ability and responsibility to require disclosures, including ESG-related disclosures, that would further its mission to protect investors; promote more fair, orderly, and efficient markets; promote capital formation; and protect the public interest."[3]

The SEC has a responsibility to investors, but also to a large variety of market participants, including many actors that rely on disclosures for vital information. From the SEC's own website, the main purposes of the laws governing the SEC "can be reduced to two common-sense notions:

- Companies offering securities for sale to the public must tell the truth about their business, the securities they are selling, and the risks involved in investing in those securities.
- Those who sell and trade securities – brokers, dealers, and exchanges – must treat investors fairly and honestly."[4]

[3] https://www.amer canprogress.org/art c e/sec-broad-author ty-requ re-c mate-esg-d sc osures/
[4] https://www. nvestor.gov/ ntroduct on- nvest ng/ nvest ng-bas cs/ro e-sec