

June 10, 2022

VIA EMAIL (rule-comments@sec.gov)

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

Re: **File Number S7-10-22**
Comment to Proposed SEC Rule – *The Enhancement and Standardization of
Climate-Related Disclosure for Investors*

Dear Secretary Countryman:

The Commercial Real Estate Finance Council (“CREFC”) welcomes the opportunity to provide the following comments to the U.S. Securities and Exchange Commission’s (“SEC’s”) proposed rule entitled The Enhancement and Standardization of Climate-Related Disclosure for Investors, file number S7-10-22 (the “Proposed Rule”).

CREFC comprises over three hundred institutional members representing U.S. commercial and multifamily real estate investors, lenders, and service providers – a market with over \$5 trillion of commercial real estate (“CRE”) debt outstanding. CREFC members include various CRE finance industry participants, including different types of lenders (i.e., investment banks, commercial banks, debt funds, government-sponsored entities), sponsors and underwriters of commercial mortgage-backed securities (“CMBS”), investors and purchasers of CRE loans and CMBS products, including insurance companies, pension funds, specialty finance companies, real estate investment trusts (“REITs”) and money managers, loan servicers, rating agencies, accounting firms, law firms, appraisers, and various due diligence service providers.

CREFC’s mandate is to promote liquidity, transparency, and efficiency in the CRE finance markets. It does this by acting as an advocate for the industry, setting market standards and best practices, and providing education for market participants. To that end, with respect to the Proposed Rule, CREFC recognizes the widely held view that climate change is a critical threat to the American economy. CREFC also understands that combatting climate change and laying the groundwork for a transition to net-zero emissions in a meaningful way requires a cooperative partnership between government and the private sector. Neither businesses nor the government alone can solve the economic and environmental challenges created by climate change. Instead, businesses need clear, predictable, and practical public policy in order to most effectively incorporate climate change considerations in their decision-making.

In light of the foregoing, CREFC supports the SEC’s efforts to regulate climate change disclosure through the promulgation of the Proposed Rule to ensure that CRE investors are properly informed about climate change risk when making investment decisions, and to facilitate

the disclosure of consistent, comparable, and reliable information on climate change risks relating to their investments in CRE debt. Although the CREFC membership spans the entirety of the CRE finance industry, we offer this comment letter for your review and consideration primarily from our perspective as lenders with respect to CRE debt, sponsors and underwriters of CMBS and other similar asset-backed securities, investors in CRE debt instruments, and related service providers. Our comments are presented in four (4) parts, both in the executive summary below, and followed by more in-depth commentary and analysis.

Before discussing each of these topics, we want to share an overarching concern with the proposal as it relates to timing. In the proposal, the SEC repeatedly referred to an adoption period of December 2022 for “illustrative” purposes. Given the breadth and depth of the proposed requirements, a year-end adoption date is very aggressive. For context, the Partnership for Carbon Accounting Financials (“PCAF”), a framework cited by the SEC in the Proposed Rule, has a three-year implementation period for organizations that opt-in to the program. CREFC believes that the final rule should be subject to a longer implementation period to allow market participants to continue to develop best practices over time. As discussed in greater depth herein, and shared with the SEC on several occasions, the CRE finance industry is actively developing through CREFC the capacity to provide investors with pertinent climate-related information. CRE finance industry participants and the SEC should continue to work together constructively in developing a robust climate disclosure framework. The costs of a haphazard and rushed implementation of any final rule will be significant and will be felt across the industry. We believe that with a less aggressive implementation timeline, we can best support the SEC’s efforts. As discussed herein, we believe that investors will be better served by allowing CREFC to continue its work with the CRE finance industry to address climate-related disclosure.

Executive Summary
<p>Part I. The SEC should allow the CRE finance industry to develop its own best practices to address climate change risk, which will be carefully tailored to its market participants. As has been discussed between CREFC leadership and SEC commissioners and staff members multiple times over the past 12 months, the industry-led effort to develop these best practices is already underway and continuing with positive effect.</p>
<p>Part II. With respect to Scope 3 greenhouse gas emissions, more clarity and guidance is needed in order for the CRE finance industry to evaluate how to comply with the Proposed Rule in a consistent manner so as to provide reliable information to investors. Without such clarity and guidance, the Proposed Rule is reasonably likely to promote more vague, fragmented, and selective climate risk disclosure, an unintended consequence that would undermine the SEC’s objectives with respect to the Proposed Rule. Depending on such additional direction from the SEC, it may be advisable to delay some aspects of the Scope 3 requirements for the CRE finance industry to allow more time for industry standards to develop. To the extent Scope 3 greenhouse gas emissions disclosures apply to the CRE finance industry, the SEC should grant appropriate industry-specific safe-harbors and exemptions, should only require disclosure annually, and should only require disclosure of reasonable estimates.</p>

Part III. Regarding Scope 1 and Scope 2 greenhouse gas emissions, the SEC should provide greater specificity as to how such emissions apply to CRE finance industry participants, if at all, especially for those CRE finance industry participants who own loans, bonds, and other debt instruments related to real estate assets, but not real estate assets themselves. The issues of foreclosure and other remedies, as well as preferred equity (i.e., limited circumstances in which CRE lenders end up owning the underlying real property), should also be specifically addressed in the final rule (please see page 9 for additional detail). To the extent Scope 1 or Scope 2 greenhouse gas emissions disclosures apply to the CRE finance industry, in addition to the safe harbors discussed in Part II, the SEC should only require disclosure annually, and should only require disclosure based on actual data rather than estimated data.

Part IV. For the parts of the Proposed Rule requiring disclosure of physical and transition climate risks, and the impacts thereof on a registrant’s business, the SEC should provide more clarity regarding how these factors apply to CRE finance industry participants. In addition, more time is needed before such disclosures can be relied upon by investors in a credible manner. The available climate risk models and tools being used to measure these items lack consistency and are not yet widely adopted. Therefore, the SEC should instead look to, and rely on, the standards and customary due diligence materials that are universally accepted by the CRE finance industry when applying the Proposed Rule to CREFC members.

Part I – Best Practices

The Proposed Rule states that it does not apply to asset-backed issuers. In carving out these market participants, the Proposed Rule explains “*The Commission and staff are continuing to evaluate climate-related disclosures with respect to asset-backed securities.*” Further, the Proposed Rule asks the following questions: “*Should we require asset-backed issuers to provide some or all of the disclosures under proposed Subpart 1500 of Regulation S-K? If so, which of the proposed disclosures should apply to asset-backed issuers? Are other types of climate disclosure better suited to asset-backed issuers? How can climate disclosure best be tailored to various asset classes?*”

The SEC should allow the CRE finance industry, led by CREFC, sufficient time to formulate its own best practices for disclosing climate risk. CREFC is a member-driven organization whose principal functions include setting CRE finance and capital market disclosure standards and best practices for all types of CRE finance, and facilitating the free and open flow of market information among all participants. In this role, CREFC is in a position to ascertain what CRE finance investors want with respect to climate risk disclosure and what CRE finance lenders can provide in a consistent and credible matter.

CREFC is taking an active role in the development of best practices around climate risk disclosure. In February 2021, CREFC launched its Sustainability Initiative seeking to align the objectives of its members and the commercial real estate finance industry with the opportunities and challenges of environmental, social, and corporate sustainability. CREFC also provided a response to the RFI. Members of CREFC leadership have met with SEC Commissioners and staff on at least five different occasions over the past year to discuss the work CREFC has been doing through its

Sustainability Initiative to create a climate risk disclosure framework specific to the CRE finance industry.

Specifically, CREFC has analyzed what climate-related information is obtainable, relevant, and meaningful for borrowers, lenders, servicers, issuers, and investors and has developed preliminary climate-related data fields that can be incorporated into the existing Investor Reporting Package™ (“IRP”) once finalized. The IRP is a comprehensive, customized disclosure framework that, since 1996, has provided CMBS investors with timely, standardized, and useful disclosure and reporting that is specifically tailored to the needs of CMBS investors to understand property-, loan-, and bond-level information and is now broadly used for investor reporting for all CRE structured products. The vast majority of the proposed climate-related data fields would be codable, objective, and quantifiable. Examples of these proposed data fields include flood zone designations, green building certifications, and building Energy Star scores.

We believe that the IRP is the proper vehicle to facilitate ongoing climate-related disclosures for CMBS. We also believe that the IRP could provide a template for development of reporting requirements across the CRE finance industry. Investors in the industry are most interested in property-level data, not company-level data. Use of the IRP generally, or a framework derived from CREFC’s work on the IRP, will promote clear and consistent disclosure of climate risk to CRE investors.

Accordingly, the SEC should allow CREFC the time needed to continue its work in developing its climate risk disclosure framework. Once finalized, the SEC should permit use of the IRP or a framework derived from the IRP to be deemed in compliance with the final rule for the CRE finance industry. This can be achieved in the final rule by establishing a safe-harbor provision in one of two ways: either by having the effective date of the final rule, as it relates to asset-backed issuers using the IRP and its related climate risk framework, be concurrent with the official announcement date of the final IRP climate risk disclosure framework, or by providing that the use of such final IRP climate risk disclosure framework is deemed to be in compliance with the final rule. Taking this approach would not be the first time the SEC has allowed CREFC and the CRE finance industry to develop its own market-specific rules best suited and carefully tailored to the risks and concerns facing its market participants. Other recent examples include:

- Regulation RR (CMBS risk retention) - the SEC and other regulators made an exception for CMBS based on market practice with respect to B-piece investors who already served the purposes of the risk retention regime; and
- Regulation AB II - the SEC aligned its requirements with the reporting in the IRP, allowing for greater comparability across offerings and minimizing the burden and cost of reporting.

Finally, we want to note the unique difficulties in applying the proposed disclosures to CMBS issuers. CMBS issuances are structured to legally isolate the securitized assets from the originators of the assets. The originators, sellers, and sponsors of securitized assets typically have little or no involvement with the assets after securitization occurs. The legal isolation of securitized CRE assets suggests that any ongoing, post-securitization disclosure regarding sustainability and climate risk should be primarily focused on the securitized assets rather than the originators, loan sellers, underwriters, or depositors in securitization transactions. In addition, it may be practically

impossible for legacy CMBS transactions to comply given that transaction documents will not have included any requirements regarding energy efficiency, greenhouse gas emissions, or other climate change-related data.

Part II – Scope 3 GHG Emissions Disclosure

For certain registrants, the Proposed Rule requires disclosure of Scope 3 greenhouse gas (“GHG”) emissions if either (a) such emissions are material or (b) if the registrant has set a GHG emissions reduction target or goal that includes Scope 3 emissions. To the extent this Scope 3 disclosure requirement in the Proposed Rule will apply to CREFC members, CREFC requests that the SEC provide more clarity and guidance, and that the CRE finance industry have more time to fully adopt Scope 3 reporting requirements. To underline the importance of this request on behalf of its members, CREFC would like to call to the SEC’s attention the following challenges as it relates to the potential disclosure of Scope 3 GHG emissions:

1. According to the Greenhouse Gas Protocol (“GHG Protocol”), Scope 3 GHG emissions are all indirect emissions not included in Scope 2 and include all upstream and downstream activities that are linked to the company’s operations, such as business travel, commuting, use of sold products and waste. There is a wide range of uncertainty in Scope 3 GHG emissions measurement, which can lead to significant variation and error. Many companies do not calculate Scope 3 GHG emissions at all.

CREFC asks that the SEC provide more guidance on how a registrant (a) can validate its upstream and downstream activities with reasonable certainty and (b) reasonably determine it has captured all of such upstream and downstream activities (i.e., where does the registrant “stop” counting). More clarity on these questions as they relate to the issue of financed emissions is particularly important to many CREFC members. For example, what is a lender’s Scope 3 GHG emissions when they make a loan to a single-purpose entity with no assets other than the commercial real estate building or buildings serving as the collateral for the loan?

2. There are fifteen distinct categories of Scope 3 GHG emissions under the GHG Protocol. While we view many of these categories as inapplicable to CRE finance industry participants and their businesses today, CREFC members need to understand which of these categories, if any, the SEC believes apply to the CRE finance industry. Further clarity from the SEC would help CRE finance industry participants develop the capacity to collect and produce consistent reporting and disclosure that is decision useful to investors. This additional clarity will benefit both the parties that would be subject to the Proposed Rule and the investors the SEC seeks to protect.
3. Currently, obtaining the data necessary to calculate directly any of the categories of Scope 3 GHG emissions for the CRE finance industry is at best difficult and at worst impossible. In documents regularly used by CRE finance stakeholders today, such as leases between landlords and tenants, loan documents between lenders and borrowers, offering documents prepared by CMBS issuers and underwriters, and servicing agreements between lenders and master and special servicers, there is no

legal or contractual right for a party to obtain the necessary GHG emissions data from the other party. Further, it will take substantial time for the right to obtain any such information to become accepted in the market.

In any situations where Scope 3 GHG emissions data cannot be obtained under the legal documents governing the relationship between third parties, CREFC recommends the SEC provide for a safe-harbor or exemption. Legacy transaction documents that are in existence prior to the effective date of the final rule certainly should be included in this safe-harbor or exemption. The final rule should apply only with respect to documents first entered into after the effective date, subject to all other safe-harbors and exemptions, and only to the extent such documents expressly provide that such data is required to be delivered thereunder.

4. If and to the extent Scope 3 GHG emissions do apply to CRE finance industry participants, CREFC recommends that only estimated data for such emissions be required to be disclosed, as opposed to actual data. The Proposed Rule acknowledges the difficulty in collecting Scope 3 emissions data, commenting that “[w]e acknowledge that a registrant’s material Scope 3 emissions is a relatively new type of metric, based largely on third-party data.” CREFC agrees with the SEC that the reporting of Scope 3 emissions is heavily dependent on third-party data. Scope 3 emissions are indirect emissions outside the direct control of the registrant. According to MSCI, Inc., most companies are using estimated data for Scope 3 emissions, rather than actual data. Therefore, given that a registrant is relying on third-party data to determine its Scope 3 emissions, the final rule should require that only reasonable estimates of Scope 3 GHG emissions should be disclosed, not actual data. Furthermore, the final rule should include a presumption that reliance on information provided by unaffiliated third parties such as tenants, borrowers, or service providers is reasonable for purposes of calculating Scope 3 GHG emissions.
5. CREFC recommends that registrants be required to produce Scope 3 GHG disclosures only once per year, without a special duty to update such disclosures at any later date. Registrants should be allowed to choose when during their fiscal year these disclosures will be made annually. Gathering relevant third-party data and preparing and verifying estimates of Scope 3 emissions will require significant resources on the part of registrants. As they are relying on third parties to supply the data and on other third parties to verify the data, requiring the disclosure of Scope 3 emissions more frequently than once per year will be extremely onerous. When preparing for filings, a registrant may not have the most current information from third parties. Registrants may disclose estimates for data that is subsequently revised by a third-party after the filing date. Given the time and expense necessary to produce these filings, and the fact that the actions of the third-party supplying the estimated data is outside the control of the registrant, these situations should not inherently give rise to a special duty to update. An estimate produced and disclosed in accordance with accepted standards should not be subject to continuous reevaluation or replacement. Accordingly, we ask that the final rule make clear that registrants are not required to update or amend any filed disclosure of its Scope 3 emissions based on estimated data if such estimated data is later revised or updated.

6. We call to the SEC’s attention that many CREFC members, including mortgage REITs, are currently reporting certain climate risk information under other commonly used voluntary frameworks such as Global Reporting Initiative (GRI), Global Real Estate Sustainability Benchmark (GRESB), and Sustainability Accounting Standards Board (SASB). The Proposed Rule relies heavily, however, on Task Force on Climate-Related Financial Disclosures (TCFD) and the GHG Protocol for its requirements. Will the SEC consider registrants who use these other voluntary frameworks for disclosing climate risk as being in compliance with the Proposed Rule? Will the SEC provide more clarity on how registrants can rely on or incorporate these other frameworks in seeking to satisfy the Proposed Rule’s requirements?

For all of the reasons stated above, CREFC respectfully asks the SEC to:

- Provide more clarity and guidance on which Scope 3 emission categories apply to CREFC members and other stakeholders in the CRE finance industry, and how such members and stakeholders can comply with the Scope 3 GHG emissions requirements set forth in the Proposed Rule;
- Grant additional safe harbors or exemptions to the Scope 3 GHG emissions requirements of the Proposed Rule to address the concerns outlined above, including additional protections that (1) reliance on information from third parties is presumed to be reasonable and that (2) no reporting would be required with respect to legacy transactions where registrants have no legal right to obtain necessary information;
- Confirm that Scope 3 GHG emissions disclosures may be made based only on estimated data, without the requirement for actual data; and
- Provide more time to meet Scope 3 GHG emissions reporting requirements, if necessary, and consider allowing two additional years to comply with those disclosure requirements.

Part III – Scope 1 and Scope 2 GHG Emissions Disclosure

The Proposed Rule requires disclosure of Scope 1 and Scope 2 GHG emissions. The Proposed Rule defines Scope 1 GHG emissions as direct emissions from operations that are owned and controlled by a registrant. The Proposed Rule defines Scope 2 GHG emissions as indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a registrant. Many companies and other corporate entities in the CRE finance industry own or control loans, bonds, and other debt instruments secured by commercial real estate assets. Regarding Scope 1 and Scope 2 GHG emissions, the SEC should provide more clarity and guidance regarding how such emissions apply to CRE finance industry participants, if at all. Some challenges identified in Part II with respect to Scope 3 GHG emissions information, such as the reliance on third parties or that legacy contracts

generally do not provide for access to such information, also apply to Scope 2 GHG emissions data.¹

If and to the extent Scope 1 and Scope 2 GHG emissions do apply to CRE finance industry participants, CREFC recommends that the final rule require (1) disclosure of actual data only for Scope 1 and Scope 2 emissions, rather than estimated data, and (2) disclosure of Scope 1 and Scope 2 emissions only once during a registrant's fiscal year, after it has 12 months of actual, verified data, without any special duty to update. CREFC believes disclosing actual data of Scope 1 and Scope 2 emissions is preferable to estimated data because it is more reliable and transparent. CREFC acknowledges that the Proposed Rule provides that a registrant may use reasonable estimates when disclosing its GHG emissions "as long as it also describes the assumptions underlying, and its reasons for using, the estimates." However, at the present time, no uniform set of assumptions exists in the CRE market. Without fully developed and commonly used standards, differing assumptions will lead to inconsistent, noisy information. It would also expose the registrant to potential liability if the basis for a registrant's estimates is not aligned with changing standards. Such liability risk is heightened by the fact that estimated data is inherently uncertain and can be unreliable, and having a special duty to update if there are material differences in the estimates reported and actual data. This would potentially expose the registrant to third-party claims unnecessarily. Furthermore, this approach raises practical issues with respect to obtaining attestation for estimates that are likely to be revised.

The issues identified above can be eliminated by allowing registrants reasonable time to produce actual data, rather than estimated data followed by a potential revision. This would also better achieve the SEC's objective of providing investors with reliable disclosure. Therefore, CREFC recommends that Scope 1 and Scope 2 disclosures be made after a registrant has all of the actual data it needs to avoid reliance on estimates – with enough time to have those emissions verified by third parties. Said differently, the SEC should only require Scope 1 and 2 disclosure after a registrant possesses a full 12 months of actual emissions data for the prior fiscal year, and after such time as such actual data has been examined and verified using commonly accepted standards for the CRE market. We do not believe that registrants should face liability in connection with their reliance on third-party data or tools to prepare disclosure and therefore ask the SEC to consider a safe harbor on these matters.

It is unclear how the application of the dual concepts of organizational boundaries and operational boundaries apply with respect to Scope 1 and Scope 2 GHG emissions of CRE finance industry participants. The Proposed Rule suggests that registrants, in defining these boundaries, use the same set of accounting principles applicable to a registrant's consolidated financial statements. This guidance is unclear as it relates to many CRE finance industry participants. For example, many CREFC members are lenders who make real estate loans secured by commercial properties. As part of these loans, lenders have economic involvement with borrowers and tenants at the applicable mortgaged property. Lenders collect fees, regular monthly debt service, prepayments, certain premiums, and the ultimate repayment of principal at maturity, but they generally do not include the borrowers on their consolidated financial statements. Furthermore, the Proposed Rule's use of accounting principles for setting organizational boundaries would

¹ These sorts of problems may also be applicable to Scope 1 GHG emissions data depending on how disclosure rules apply to the CRE finance industry.

conflict with other standards that some registrants use for voluntary reporting, such as those in the GHG Protocol. In light of the business of many of its members, if Scope 1 and Scope 2 emissions disclosures do apply to CRE finance industry participants, CREFC asks the SEC to provide greater clarity and guidance on how CRE finance industry participants can establish their permitted organizational or operational boundaries with respect to the collection of Scope 1 and Scope 2 GHG emissions data in a clear and consistent manner. Such additional guidance and clarity will promote uniform and comparable disclosure that will serve to better inform investors.

Although, in general, many CRE finance industry participants do not own real estate that produces Scope 1 or Scope 2 GHG emissions, CREFC would like to bring to the attention of the SEC two specific scenarios for which additional clarity should be provided in the final rule:

1. Many CRE finance industry participants own or control loans, bonds, and other debt instruments secured by commercial real estate, and these instruments provide that if the borrower or debtor defaults under such instrument, the holder thereof can exercise remedies against the defaulted obligor and the collateral. These remedies can include foreclosure, deed- or assignment-in-lieu of foreclosure, and the appointment of a receiver.
2. Certain debt instruments held by CRE finance industry participants are classified not as equity or debt but rather as “preferred equity”. Preferred equity can be structured as equity or it can have debt-like features such as (a) a mandatory redemption date, which is the functional equivalent of a maturity date under a loan, (b) the preferred return being payable on a periodic distribution date, the failure of which results in a default under the operating agreement and allows the preferred equity holder to enforce its remedies and (c) upon an event of default under the operating agreement, the remedies available to a preferred equity member can include (i) removing the operating member as administrative member, and taking over management of the company, (ii) stripping the operating member of all voting rights, (iii) conversion of unpaid preferred return into a member loan to the company having a high rate of return, (iv) exercising a put option requiring the company to buy out the preferred equity in full, and (v) forfeiture whereby all equity in the company is deemed assigned to the preferred equity member and the common member forfeits all of its equity and rights to receive any distributions to the preferred equity member.

In both of these examples, whereby CRE finance industry participants can exercise remedies under their commercial real estate transactions, the result will be that they now own or control a commercial real estate property. How do the Scope 1 and Scope 2 GHG emissions disclosure requirements under the Proposed Rule apply to these situations? Timely exercise of remedies can be critical in preserving the value of commercial real estate. Immediate responsibility for climate-related disclosure related to foreclosed-upon property would introduce delay and further risks. Before foreclosure, lenders often rely on third parties—including the party in default who may not have reported every issue or mitigated each problem—for information about the properties; after foreclosure, lenders would need time to investigate and gather available information, verify data, and address any problems. Accordingly, we ask that the SEC grant a two-year grace period with respect to reporting Scope 1 and Scope 2 GHG emissions for any commercial real estate acquired via foreclosure, deed-in-lieu of foreclosure, or other similar

exercise of remedies, with the two-year period commencing on the date the registrant becomes the record owner of the property.

For all of the reasons stated above, CREFC respectfully asks the SEC to:

- Provide greater clarity and guidance on how Scope 1 and Scope 2 GHG emissions apply to the CRE finance industry;
- Not require Scope 1 or Scope 2 GHG emissions disclosures during the two-year period after completion of a foreclosure or other similar exercise of remedies with respect to commercial real estate;
- Require only annual reporting of Scope 1 and Scope 2 GHG emissions after a registrant possesses a full 12 months of actual emissions data for the prior fiscal year, and after such time as such actual data has been examined and verified; and
- Provide the same safe harbors and exemptions for the disclosure of Scope 2 emissions as recommended above for Scope 3 emissions with respect to (a) the usage of, and reliance on, third-party data and tools, and (b) legacy transactions.

Part IV – Disclosure of Physical and Transition Climate Risks and Impacts

The Proposed Rule would require disclosure of any climate-related risks reasonably likely to have a material impact on the registrant’s business or consolidated financial statements as manifested over the short, medium, and long term. After disclosing such climate-related risks, the Proposed Rule would then require the registrant to describe the actual and potential impacts of those risks on its strategy, business model, and outlook, including the time horizon for each described impact as manifested in the short, medium, or long term. The proposed rule would require a registrant to disclose the financial impacts of severe weather events, other natural conditions, transition activities, and identified climate-related risks on the consolidated financial statements included in the relevant filing unless the aggregated impact of the foregoing is less than one percent of the relevant total line item (i.e., revenues, expenses, etc.) for the relevant fiscal year.

With respect to these disclosure items set forth in the Proposed Rule, CREFC has the following three comments.

1. The SEC should provide more clarity on how these factors apply to CRE finance industry participants. As noted above in this comment letter, lenders who own loans, bonds, or other debt instruments secured by commercial real estate often do not directly own commercial properties. In many of the commercial real estate transactions, the parties are single-purpose entities created solely for the purpose of holding a loan secured by commercial real estate. These entities do not directly own real estate or any other assets. The SEC should provide more guidance on how these climate risk and climate impact disclosure requirements apply in these situations, if at all. Alternatively, the SEC should provide an express safe-harbor or exemption in the final rule for these entities.

2. Although CREFC agrees with the SEC that it is important for the final rule to provide for the disclosure of material physical and transition climate risks, and related impacts on business operations, it is too soon to require registrants to collect and report this information to investors—and attach securities liability to such reporting—because the capacity of the CRE finance industry to efficiently gather the necessary information is still developing and no uniform reporting standard exists.

The available climate risk models and tools being used to measure these items lack consistency and are not yet widely adopted. The climate-risk data analytics industry is evolving rapidly. The market is expanding with new technologies and new companies coming on-line with different methodologies, definitions, and rating systems to track climate risks such as flooding, sea level rise, and water scarcity.

Accordingly, there are no industry-accepted minimum qualifications for these systems at the present time. Further, data analytics firms that quantify climate risks are often reluctant to share their formulas and underlying assumptions for competitive reasons, especially in an emerging market where these services are in high demand by business of all kinds. Therefore, without data of sufficient uniformity and quality, most companies, including CRE finance industry participants, will struggle to obtain credible climate risk and climate impact data to disclose under the Proposed Rule. This struggle will not serve investors looking to rely on this information to make investment decisions. Identifying climate risks and the relevant metrics is likely to be a moving target for the foreseeable future. The SEC should allow the CRE finance industry adequate time to develop and coalesce around one or more standard reporting frameworks for these disclosure items.

CREFC can inform the SEC that progress is being made in this area in the CRE finance industry. One such standard physical climate risk assessment for real property assets is being designed by ASTM International (“ASTM”). ASTM is one of the largest voluntary standards-developing organizations in the world. ASTM-standard assessments are generally accepted by CRE finance industry participants in commercial property transactions.² An ASTM International Task Group comprised of a diverse group of stakeholders (including lending institutions, rating agencies, government-sponsored enterprises, and investors) along with subject matter experts is currently developing the standard for expected publication within the next year. A finalized standard could also be aligned with the existing set of due diligence reports described below which are currently being used in the CRE finance industry. Additionally, CREFC is optimistic that widespread use of this new ASTM climate risk standard will dovetail with its ongoing work to develop the objective and codable climate-focused IRP data fields discussed above in Part I of this comment letter.

² One example of an ASTM Standard is E1527 Phase I Environmental Site Assessment which has been approved by the U.S. Environmental Protection Agency with respect to potential liability protections under applicable federal environmental law.

The Proposed Rule would require a registrant to disclose the financial impacts of severe weather events, other natural conditions, transition activities, and identified climate-related risks on the consolidated financial statements unless the aggregated impact of such events, conditions, activities, and identified risks is less than one percent of the relevant total line item for the relevant fiscal year. CREFC holds the view that, before any such percentage-based accounting rule is implemented, the Financial Accounting Standards Board (“FASB”) should serve as the industry guide. Adoption by FASB of a completed standard and a compliance period to implement that standard would be critical before adoption of a rule of this kind. We encourage the SEC to work with FASB to evaluate and, if appropriate, adopt such a standard. The creation of novel climate accounting standards merits a robust standard-setting process with involvement from stakeholders including registrants, investors, and auditors. Any percent-based reporting threshold with respect to the aggregated impact of severe weather events, other natural conditions, transition activities, and identified climate-related risks will be extraordinarily difficult and costly to implement. Allowing registrants to coalesce around a final standard would also improve data gathering capacities of the climate-risk data analytics industry. Apart from mitigating large costs to registrants, investors would benefit from consistent, comparable, and reliable climate-related information grounded in the expertise of the CRE finance industry. Furthermore, we question why the Proposed Rule includes a one percent (or indeed any specific percent) disclosure threshold at all, as such prescriptive requirement deviates from the materiality standards provided for elsewhere in the Proposed Rule. Instead, we believe discussions of physical risks, transition risks, and associated expenditures are better suited for a principles-based, narrative discussion under Regulation S-K as a “known trend or uncertainty”, as opposed to a bright-line quantification in a financial statement as proposed under Regulation S-X.

Without fully developed tools to reliably gather and report on these matters with greater accuracy and a uniform standard to quantify these risks, registrants will be unable to provide the sort of meaningful disclosures the SEC seeks. CRE finance industry participants are working to grow the capacity to gather the information needed for such reporting and are engaged in the development of reporting standards. We ask that the SEC consider delaying implementation of any sort of percentage-based reporting threshold until the ability of industry participants to gather the relevant information has improved, standards (like the one being developed by ASTM) with respect to such reporting have crystalized, and a completed standard is adopted by FASB.

3. Finally, as mentioned above, while the ASTM and the climate risk data analytics industry each works to produce a universal standard for measuring the wide array of climate risks and impacts that is accepted by businesses on a widespread basis, as it relates to the CRE finance industry, the SEC should instead look to, and rely on, the standards and customary due diligence materials that are universally accepted by the CRE finance industry when applying the final rule to industry participants. These due diligence materials regularly used in commercial real estate finance transactions include the following reports:

(a) Property Condition Assessment (“PCA”). Lenders typically require, as a condition precedent to closing a real estate finance transaction, a PCA in accordance with ASTM E2018-15 to assess building condition and provide cost estimates for immediate repairs and long-term capital requirements. Some lenders have started asking for climate risk to be considered within a PCA so that replacement costs can be “climate informed”; however, there is no industry standard for how to do this yet.

(b) Phase I Environmental Site Assessments (“ESA”). In addition to a PCA, CRE lenders require a Phase I ESA for each commercial property serving as collateral for the transaction in accordance with ASTM E1527-13 to assess the overall historical environmental condition of such property. Like the PCA, CRE lenders and investors have asked for climate risk to be considered within a Phase I ESA. However, there is no industry standard for how to do this yet.

(c) Flood Insurance and Flood Zone Determinations. Lenders typically engage third-party insurance consultants to assess the flood risk of properties serving as collateral for the loan. If a property is located in a special flood hazard area (“SFHA”) and the lender is a federally regulated bank or entity, flood insurance is legally required. SFHAs are designated areas of land in either flood zone A or flood zone V, which means they are exposed to a one percent or greater risk of annual flooding (i.e., the “hundred-year flood”).

While CREFC recognizes that the data available today pursuant to these reports is critical to any commercial real estate transaction, it readily admits that they are of limited utility with respect to the climate’s risk and impact on a commercial real estate property. A generally accepted standard will change some of the content of these due diligence reports and adapt them to the evolving needs of the CRE finance industry and could serve as the basis for consistent and reliable reporting without creating undue costs or burdens on registrants.

For all of the reasons stated above, CREFC respectfully asks the SEC to:

- Consider delaying any implementation of the reporting threshold for aggregated impact of severe weather events, other natural conditions, transition activities, and identified climate-related risks until after FASB sets accounting rules for such reporting and there are further developments improving the ability of industry participants to gather the relevant information; and
- Look to, and allow registrants in the CRE finance industry to rely on, the standards and customary due diligence materials that are universally accepted by the CRE finance industry when applying the final rule to industry participants.

Conclusion

Investors are demanding more climate risk information as part of their investment-making decision process. CREFC is committed to continuing to work with the SEC to develop a climate risk disclosure framework that increases the consistency, comparability, and reliability of climate-related information for investors. Clarity and consistency of information are critical for the

Proposed Rule to function properly and to protect investors. At the same time, CREFC knows that companies need guidance from regulators and policymakers on standardized climate risk disclosure rules. CREFC looks forward to discussing the Proposed Rule and this comment letter with the SEC and continuing to work together on this important endeavor.

Please let us know if there is any additional background information on commercial real estate lending that the SEC might find helpful as it continues to examine climate-related disclosures. Feel free to contact Sairah Burki, Managing Director, Regulatory Affairs & Sustainability, Commercial Real Estate Finance Council, at [REDACTED].

Sincerely,

A handwritten signature in cursive script that reads "Lisa A. Pendergast". The signature is written in dark ink and includes a long horizontal flourish extending to the right.

Lisa Pendergast
Executive Director
CRE Finance Council