Empowering Directors. Transforming Boards.

June 13, 2022

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

Re: File Number S7-10-22

Dear Ms. Countryman:

The National Association of Corporate Directors (NACD) is pleased to comment on the recent rulemaking release from the US Securities and Exchange(SEC) on "The Enhancement and Standardization of Climate-Related Disclosures for Investors."[i]

As the nation's leading organization for director education and certification, with a membership of more than 23,000 board members, NACD is well aware of the vital role that boards of directors play in the oversight of corporate risk.

Climate risk poses financial risk for businesses around the globe. As stated in the release, "climate events and contingencies can pose financial risks to issuers across industrial sectors."[ii] Greenhouse gas emissions—a cause of planetary warming, which can trigger climate change—are at the "highest levels in human history," according to the Intergovernmental Panel on Climate Change (IPCC)[iii] following the release of its April 2022 report, *Climate Change 2022: Mitigation of Climate Change*.[iv]

Climate Leadership in the Boardroom

NACD participates in the Climate Governance Initiative of the World Economic Forum, serving as the exclusive host chapter for directors in the United States. Through this affiliation and through various programs and publications, we are helping our members meet the challenge of climate stewardship described in a June 2021 publication of the Climate Governance Initiative. According to this guide, corporate directors must "take up the issue of climate change in the development of their companies' corporate strategy,

oversight, and disclosure."[v] While disclosures by themselves obviously cannot mitigate climate change, they can motivate behavior that leads to this result.
NACD has no opinion on whether or not the SEC has authority to compel disclosures of climate risks beyond what is currently mandated. Reasonable minds can differ on this point. We do believe, however, that disclosure rules can accelerate what we call "climate leadership" in the boardroom. Furthermore, by setting standards for disclosure, new rules can make companies more comparable and can disincentivize "greenwashing."

Specific NACD Concerns

NACD supports the use of mandated disclosures to mitigate and manage climate risk. In this regard, we approve of the general direction of this recent rulemaking, which is closely based on the well accepted *Commission Guidance Regarding Disclosure Related to Climate Change*[vi] and aligned with leading disclosure frameworks such as the Task Force on Climate-related Financial Disclosures[vii] and the Greenhouse Gas Protocol.[viii] However, NACD is concerned about four parts of the rule that require closer SEC attention.

Climate Expertise. We are concerned about the proposal's requirement that board's disclose "whether any member of a registrant's board of directors has expertise in climate-related risks."[ix] This language implies that climate expertise is static and individual, whereas, in fact, climate expertise is dynamic and collective. Climate expertise is not something an individual director "has." That is, it cannot be sourced merely through the prior work of an individual director. Rather, it should be sourced through continuous learning for all directors, which should be disclosed.

The SEC should not send boards on a scavenger hunt to find climate experts to be able to make this disclosure. Rather, the SEC should ask for disclosures about climate education. In our view, *every* board member should be conversant on the basic premises and vocabulary of climate change, and knowledgeable about its material impacts on the company.

Climate education is warranted for all board members to acquire this basic understanding—not only as individuals, but as full boards. For boards to embed climate throughout the range of topics they consider, they can receive climate “level setting” tailored to their industries and companies. If there is a greater, more specific need, the board can and should hire external expertise.

We hold this same view on other critical business issues such as cybersecurity, human capital, and other spotlighted issues. If we mandate experts in all such areas, boards are likely to become too large and unwieldy.

Finally, we are concerned that the proposal, as it currently stands, could bring greater liability to boards (if they do not identify any individuals who are “climate experts”) or to individuals (if they are so identified). One undesirable scenario would be that a company suffers a climate event and receives a shareholder class action suit for failing to anticipate this event either because of the absence or despite the presence of a named climate expert. If such scenarios play out, there could be a sharp increase in the cost of directors and officers liability insurance premiums.

Climate targets. The proposed rule “would require disclosure about whether and how the board sets climate-related targets or goals.”[x] This requirement, pertaining to reduction of Scope 1, 2, and 3 emissions, confuses the role of the board with that of management. Boards should stay informed about the targets and assess the feasibility of the plan to achieve them, as well as check on interim progress. They should not set targets, however; this should remain strictly management’s role. It would be better to consider a disclosure requirement that would demonstrate a board’s commitment to link climate change to strategy development and long-term value creation. The SEC might require an affirmative statement that provides assurance to shareholders and other stakeholders that the board plays a role in ensuring adequate company investment in climate risk mitigation.

Cost of Compliance. NACD urges the SEC to take adequate account of compliance costs that will be incurred as a result of proposed attestation requirements for Scope 1 and Scope 2 emissions. New systems, processes, controls, and additional personnel may be required to fulfill these proposed disclosure requirements. For example, the requirement that companies calculate the potential incremental cost of climate change for each line item in a financial statement, unless impact is less than 1 percent, will be time consuming and expensive. The burden and cost of compliance will be high, especially for mid-cap and small companies—despite their deadline extension for compliance and exemption from Scope 3 emission requirements. At the very least, the 1 percent threshold should be raised—not just for small-cap companies but for all firms.

Safe harbors. The proposed rules contain only two safe harbors: a safe harbor for forward-looking statements and one for Scope 3 emissions. Given this narrow scope of liability protection, the Commission says that the disclosures should be filed rather than furnished. We believe that unless the safe harbors can be significantly expanded, the disclosure should be furnished rather than filed. This will lessen the risk that companies making positive environmental disclosures in good faith will be investigated, charged, and fined by the SEC for alleged "greenwashing"—a current priority of the agency with respect to investment firms, according to the agency's *2022 Examination Priorities Report* (sec.gov).

Conclusion

Will these proposed rules motivate the right governance, or will they have unintended consequences? By focusing on the negative aspects of compliance in detail, the Commission may be unintentionally pushing climate out of the boardroom and into the general counsel's office. Climate could become more about reporting than strategy. This would be unfortunate. Boards should not look at climate solely as a risk governance issue—climate opportunity and innovation deserve at least equal attention.
To help the SEC view climate at the board level, NACD would be honored to gather a cadre of experienced board members to consult with the Commission on this matter.

Sincerely,

Sue Cole Peter Gleason

Peter R. Gleason, President and CEO
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National Association of Corporate Directors
Arlington, VA

[i] The release is available at this URL: https://www.sec.gov/rules/proposed/2022/33-11042.pdf.
[ii] Please see page 55 of the release.
[iii] See the Intergovernmental Panel on Climate Change (IPCC) press release.
[iv] The full report is available at this URL: https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_FinalDraft_FullReport.pdf.
[v] Commonwealth Climate and Law Initiative et alia, *Primer on Climate Change: Directors' Duties and Disclosure Obligations in support of the Principles for Effective Climate Governance* (June 2021), p. 1.
[vi] The guidance is available at this URL: https://www.sec.gov/rules/interp/2010/33-9106.pdf.
[vii] More information is available on the website of the Taskforce on Climate-related Financial Disclosures.
[viii] See the Greenhouse Gas Protocol website for additional information.
[ix] Release, op. cit., note 1, p. 94.
[x] Release, op. cit., note 1, p. 95.