

June 15, 2022

Ms. Vanessa A. Countryman
Secretary, U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 205499-1090

[Submitted via email to rule-comments@sec.gov]

Re: SEC Release Nos. 33-11042; 34-94478; File No. S7-10-22 concerning the Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Ms. Countryman:

The Real Estate Board of New York (REBNY) is pleased to provide comments to the Securities and Exchange Commission (the Commission) on its proposal concerning the enhancement and standardization of climate-related disclosures for investors. REBNY is New York City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate.

For well over a decade, building owners in New York City have operated under various regulatory regimes designed to ensure owners accurately measure and eventually reduce their energy consumption and associated carbon emissions. Beginning with local laws adopted in 2009, large buildings have annually benchmarked annual whole building energy and water consumption. More recent local laws have gone further and imposed strict whole building carbon emissions limits on many large buildings, requiring owners to reduce emissions below those limits or pay financial penalties to the City of New York.

The experience of operating under these various regulations informs our perspective on the Commission's proposed regulation of corporate climate-related disclosures as it sheds light on what building owners can measure, manage, and ultimately disclose in a timely and accurate manner.

In order to comply with local laws and to measure building performance, owners of buildings more than 50,000 sq/ft (more recently 25,000 sq/ft) in New York City have been measuring their energy consumption annually for decades. While local regulations in New York City generally require owners to measure energy consumption and GHG emissions on a whole building basis, owners are usually able to differentiate between emissions associated with their own operations (i.e., stemming from energy consumption in the owner space or building common space) from emissions in a tenant-controlled space (i.e., tenant office). As such, for New York City building owners, reporting Scope 1 and Scope 2 emissions can be done relatively easily, provided that data is made available by the local utility company.

While possible, key questions need to be clarified to allow such disclosures to be made consistently and in a way that provides clear, actionable information to investors. This includes the need for clarity about the treatment of emissions from tenant-controlled spaces, clarity on the data to use when calculating greenhouse gas emissions, and timely access to energy consumption data required to accurately calculate emissions.

At the same time, however, it is inappropriate to ask registrants to report emissions from sources that they do not own, or from operations they do not control. For real estate, this means that building owners should be under no requirement to report on the emissions of building tenants who are not in the same corporate structure as the registrant. For building owners, these types of emissions would appropriately be considered Scope 3 emissions. Of note, the practice of those of our members who own buildings in Europe is to define tenant emissions as Scope 3 emissions of the building owner.

Registrants who own buildings covered by New York City's local law that establishes carbon emissions limits for large buildings may find it challenging to accurately report building emissions to investors without clarity on how to convert energy use to emissions. This is the case because buildings generally track energy consumption, not carbon emissions. As a result, converting the building's energy use to greenhouse gas emissions requires understanding the GHG content of the energy used. New York City local law establishes a conversion factor that building owners should use to convert utility-provided electricity and district steam, natural gas, and fuel oil to greenhouse gas emissions and further requires a fixed factor to be used for each year between 2024 and 2029 and again from 2030 to 2034. However, with significant steps underway to reduce the carbon intensity of electricity and district steam generation in New York, the factors established in local law may not be the actual emissions factors for each year. As such, a registrant could find itself reporting different emissions under local law than it may calculate under various GHG measurement protocols.

Because of this dynamic, the Commission should establish a safe harbor for registrants who properly calculate emissions utilizing Environmental Protection Agency (EPA) data and tools. EPA tools are used widely in the real estate industry including but not limited to the EPA's "Portfolio Manager" tool that helps owners measure energy consumption and calculate emissions and the emissions factors established by the agency. Establishing a safe harbor that supports the utilization of these assets would help to provide investors with a clearly understood set of data and avoid the potential for misleading or inconsistent GHG quantification that results from local regulation.

Furthermore, registrants should not be asked to submit estimates of emissions or energy consumption and instead should only be required to report once a full 12 months of actual emissions data is available for the prior fiscal year. Investors deserve to make decisions based on actual, verifiable information rather than estimates that may change (in some cases significantly). While registrants typically file Form 10-K with the Commission early in the year, it may not be until several months later when the registrant will have accurate utility bills from the prior year. Indeed, it is not uncommon for utility companies to estimate energy consumption on bills and not verify that data for months (if not years). With this in mind, New York City local law requires annual benchmarking

reports be filed in the second quarter of the calendar year. To promote consistency and provide investors with accurate data, the Commission should not require registrants to file until they have access to the full year of accurate data.

In addition, the Commission should reconsider the proposed obligation that registrants report their Scope 3 emissions, if material. As a primary matter, Scope 3 emissions – emissions stemming from the company’s value chain – are challenging to measure and in some cases may be entirely unknowable. Under the proposal, however, registrants will have to first calculate those Scope 3 emissions and determine if they meet an arbitrary threshold that would deem them material. As such, by including the “if material” test, the proposal requires all registrants to measure their Scope 3 emissions even if they are not material, imposing a significant burden on all registrants.

Additionally, this requirement provides little, if any, benefit to investors. This is the case because, for many building owners, their third-party vendors may have no structure in reporting their emissions and may use different methods to calculate their emissions given that methods of calculating emissions are nascent and still developing. This is particularly true given that many third-party vendors are smaller companies with few resources that could be devoted to GHG emissions tracking. As a result, building owners could be left in a situation where they are forced to report incomplete, or even misleading, metrics to investors due to differences in how their vendors calculate emissions.

To be sure, if a registrant wishes to voluntarily disclose its Scope 3 emissions it should be allowed to do so, whether such data is material or not. However, such disclosure should not be mandatory.

Furthermore, the Commission’s proposal to require registrants to report certain financial impact metrics if climate-related physical and/or transition risks exceed one percent of the total line item of each item on the 10-K financial statement is misguided. The assumptions required to estimate the potential financial impact of unforeseen and unknowable events require making enormous assumptions, if not outright guesses, and would therefore provide little actual value to investors. Because of this reality, the Commission should abandon this one percent threshold.

Finally, greater clarity is needed for registrants who have ownership interests in buildings that may be jointly owned by other entities. For instance, if a building owner has a 40 percent stake in a building, is the owner then obligated to report 40 percent of the building’s emissions as their own? As many building owners have equity stakes in numerous properties, the Commission should make clear how the emissions from joint ventures should be reported.

Thank you for the opportunity to comment on this important issue.

Sincerely,



James Whelan
President