

SHAREHOLDER RIGHTS GROUP

June 15, 2022

Via Electronic Delivery to: Rule-Comments@sec.gov

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

Re: File Number S7-10-22

Flexibility of the proposed Climate Rule in meeting evolving needs and demands of science, business counterparties, and investors

Dear Ms. Countryman:

I write on behalf of the Shareholder Rights Group to offer a general comment and recommendation regarding the proposed rule on the Enhancement and Standardization of Climate-Related Disclosures for Investors (the “Rule”).

We have concluded that the SEC’s proposed climate disclosure rule, by providing a baseline of climate disclosures subjected to the securities laws, would yield more reliable information to investors consistent with the Commission's mission to promote orderly and efficient capital markets. Therefore, we are writing in support of the rulemaking proposal.

We are writing to recommend, however, that when the Commission finalizes the rule, it should expressly acknowledge the flexibility that the rule provides for company disclosures to evolve consistent with market demand and the evolving scientific and policy environment. In the final Rule, the Commission should include language such as the following:

The intent of the Commission in promulgating these rules is to encourage consistent and comparable disclosures, while also allowing registrants’ disclosures to evolve with changing demands and expectations. The Rule provides leeway for company disclosures to be refined over time consistent with evolving science, public policies, and the changing needs and demands of investors and other business counterparties.

Why this Clarification is Appropriate

Many of our members, as active stewards on climate change, have submitted comments urging that the final SEC Rule be more prescriptive in requiring accountability of registrants to assess the risks and step up the scale

PO Box 231 Amherst, MA 01004 • 413 549-7333

Shareholder Rights Group

Arjuna Capital

As You Sow

Boston Common Asset
Management, LLC

Boston Trust Walden

Clean Yield Asset
Management

First Affirmative Financial
Network, LLC

Harrington Investments,
Inc.

Ides Capital

James McRitchie

John Chevedden

Mercy Investment Services,
Inc.

Natural Investments, LLC

Newground Social
Investment, SPC

NorthStar Asset
Management, Inc.

Pax World Funds

Sustainability Group of
Loring, Wolcott & Coolidge,
LLC

The Shareholder Commons

Trillium Asset
Management, LLC

Zevin Asset Management

and pace of disclosure and action to meet the urgent demands of climate change.

The rulemaking proposal does not mandate any particular level of action by companies to respond to the challenges of climate change, or even to rigorously assess the risks to enterprise value that are necessarily associated with a rapid global decarbonization scenario. Instead, corporate decisions to scale up and speed up responsive action are being driven by other public policies, by business counterparties (including investors and financiers), as well as by an array of decision-makers that set corporate policy within boards and C-suites.

In light of this, a virtue of the SEC's limited rulemaking proposal is the flexibility of the disclosure requirements that will allow registrants to strengthen and intensify their responsive actions and disclosures over time to meet the challenges of rapidly evolving science, best practices, and to meet the needs and demands of investors.

Examples of Why Scope of Disclosure Will Evolve

1. Climate Disclosures Related to Financial Statements will expand over time, based on growing investor expectations for transparency on the manner in which financial estimates and assumptions may be impacted by climate risk and transition activities.

As the range of transition activities and the demands of business counterparties escalate, the content as well as the form of such financial statement-related disclosures can be expected to change significantly, with greater disclosure of the impact of climate change on capital expenditures, expected life of assets, anticipated cash flow, etc.

As the current decade of urgent climate change mitigation and adaptation continues, counterparty requirements – such as conditions of lending and investment, and European legal requirements for increased assessment and disclosure of various sustainability elements – are likely to change both the content and form of corporate disclosures in the financial statements.

Contemporaneous with these disclosure requirements is the likelihood that climate developments will increasingly be deemed to be Critical Audit Matters.

2. The accuracy of Scope 3 emissions measurement and estimation is evolving rapidly as the science of GHG estimation and the pervasive adoption of field measurement techniques drives more precision and reliability into emissions estimates, and makes corporate reports more credible regarding achievement of related targets.
3. Disclosures related to corporate strategy and business models under proposed Section 229.1502, are likely to face ever-increasing scrutiny in coming years due to the surge of institutional investor interest in assessing the adequacy of companies' long-term plans for alignment with global climate goals. These kinds of considerations are being formalized through the work of organizations like FutureZero, and in the legal theories represented by Kenneth McNeil and Keith Johnson in their groundbreaking article, *Elephant in the Room: Helping Delaware Courts Develop Law to End Systemic Short-Term Bias in*

*Corporate Decision-Making*¹.

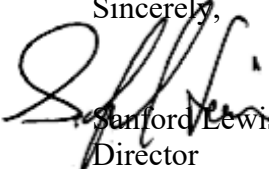
4. Disclosures relating to risks and risk management are likely to evolve with public policy and related regulatory risks, disruptive clean energy technologies, and rapid shifts in the needs and demands of consumers, workers, and communities.

Moreover, the understanding of these risks has expanded among diversified investors to include the impact that portfolio companies have on the systems that support the value of an investor's entire portfolio. See Jon Lukomnik and James Hawley, *Beyond Modern Portfolio Theory* (2021) and Freshfields Bruckhaus Deringer, *A Legal Framework for Impact: Sustainability Impact in Investor Decision-Making* (2021).

As understanding of the macroeconomic effect of climate change and its consequent impact on diversified portfolios evolves, the needs of investors seeking to steward companies away from negative climate impacts will correspondingly evolve. See, e.g., Bank of England, *Results of the 2021 Climate Biennial Exploratory Scenario* (2022) (which addresses the impact on banks of varied climate scenarios and assuming a 20-25% market correction in the UK and US equity markets by 2050 if action is not taken to address climate concerns).

5. Attestation practices for GHG emissions under Section 229.1505 are likely to evolve with accounting and technical standards and practices, along with the evolution of expertise related to these measurements and attestations.
6. Targets and goals reported under proposed Section 229.1506 will inevitably evolve with best practices and with the refinement of standards by organizations like the Science-based Targets Initiative.

In light of these and other provisions of the proposed Rule that are flexible in nature, we recommend that the Commission expressly acknowledge the adaptability of the Rule to changing conditions and needs. Thank you.

Sincerely,

Sanford Lewis
Director

cc: Mindy Lubber and Steve Rothstein, Ceres
Josh Zinner, ICCR
Lisa Woll, US SIF
Amy Borrus, Council of Institutional Investors

¹ Kenneth McNeil & Keith Johnson, *The Elephant in the Room: Helping Delaware Courts Develop Law to End Systemic Short-Term Bias in Corporate Decision-Making*, 8 MICH. BUS. & ENTREPRENEURIAL L. REV. 1 (2018). Available at: <https://repository.law.umich.edu/mbelr/vol8/iss1/2>