Daniel J. Churay
Executive Vice President – Corporate Affairs, General Counsel & Corporate Secretary
1301 McKinney St., Suite 2300
Houston, Texas 77010
[redacted]

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

via SEC internet submission form

June 16, 2022

Re: [Release No. 33-11042; File No. S7-10-22]; Comments on Proposed Rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors

Ladies and Gentlemen:

We are providing these comments on behalf of MRC Global Inc. MRC Global is a New York Stock Exchange listed company with a current market capitalization of around $950 million with projected 2022 revenue of $3.1 billion. We are the largest distributor of pipe, valves, fittings and infrastructure supplies to energy and industrial sectors. Although we perform some light assembly, by and large we source products from over 10,000 suppliers in 40 countries and sell those products to a customer base of approximately 10,000 customers. We have approximately 2,600 employees in 15 countries, with approximately 83% of our business in the United States.

A global energy transition is underway to address climate change, and we expect that this will have significant impacts on MRC Global's future business. We believe that our company has an important role to play in the energy transition, and we are already participating in many green energy projects and decarbonization efforts. In recent years, we have supplied PVF products for use in biofuel, wind, hydrogen, geothermal, hydro-electric and carbon capture and storage projects.

We appreciate the opportunity to comment on the proposed rule. Although we are a small cap company, we are a large accelerated filer to which the requirements of the proposed rules would fully apply.

Lack of Materiality. Even though climate change will have both positive and negative impacts on our business, we believe that existing disclosure requirements are more than sufficient to allow us to disclose the material impacts of climate change to the business. We have provided this information to investors in the "Item 1 – Business" and" Item 1A - Risk Factors" sections of our most recent Annual Report on Form 10-K. These disclosures are sufficient and allow registrants to provide the appropriate disclosures to investors that are material to a registrant's business. However, **the proposed climate disclosure regulations require disclosure of immaterial information** that does not impact true investment decisions in our company. In addition**, the proposed rules are ill-defined and too burdensome**.

As we participate in conversations with our current and potential investors, it is a rare occurrence that the portfolio managers who make the investment decisions to buy our company's stock ever ask about climate change or ESG. Given our interactions with these investment decision makers, the materiality of the information the proposed rule would require is suspect at best. This is true even with respect to many of the larger investors that the Commission cites in the release as supporting a climate change data disclosure rule.

It is our experience that ESG conversations appear to arise mostly in the context of proxy voting, often through an ESG analyst representing passive investment funds. While we understand that many of the large investment companies are marketing ESG funds to their investors, this is not true for all funds across the board. We do understand that many of these investment companies are using the power of the money they receive from their investors to vote the MRC Global stock the fund owns. Most of these companies vote in the manner the fund management desires rather than voting by polling the investors in the funds they sponsor. Of course, if an investment company is marketing ESG funds, it will often vote in favor of board nominees and proposals that align with positions the investment fund needs to market its business.

We prepare an annual ESG report to provide additional detailed information to interested shareholders and other investors (including those that you cite in the release) that supplements the material information that we provide in our Form 10-K and other SEC filings even though the additional information is not material to our financial results or condition. We provide this information to be responsive to certain of our shareholders and other investors because of their interest in ESG topics. This information includes certain, but not all, Scope 1 and 2 emission estimates and does not include any Scope 3 emissions. To date, we have not engaged in any scenario planning, and we have not set any greenhouse gas (GHG) emissions targets. We do disclose, both in our proxy statement and in our ESG report, our company's governance over ESG matters, including many of the governance items set forth in the proposed rule.

Scope 1 & 2 Emissions Are Immaterial to Many Registrants. As a distributor, our Scope 1 emissions mostly result from the use of delivery and sales vehicles in our relatively small fleet. It is hard to argue that these emissions drive any material investment decision. We are not an international package delivery company, a railroad, a trucking company or an airline where a vehicle fleet is the focus of their respective businesses. Likewise, Scope 2 emissions arise mostly from the use of electricity to light and heat our facilities and run our computers, equipment and copy machines. How can this be material information upon which investors decide to buy our company's stock? We believe that investors want us to light our facilities for our workers and operate our computer systems and machinery. We are opposed to the inclusion of Scope 1 and 2 emissions in filed SEC documents as this information is not material to our business. Under current disclosure rules, registrants are generally not required to state an immaterial fact in an SEC filing just to demonstrate that the disclosed fact is not material.

Scope 3 Emissions Are Ill-Defined Guesses. Among many other ill-defined aspects of the proposed rule, the sections regarding Scope 3 emissions is particularly vague. The proposed rule requires the disclosure of "total" Scope 3 emissions if material. The term "material" is ill-defined in the proposed regulation. In the classic sense, materiality is determined based upon the financial impact to the registrant. However, Section I(G)(1)(b) of the release turns the term "materiality" on its head by trying to redefine "materiality" to mean a material amount of total emissions (Scopes 1, 2 and 3) rather than a material financial impact. Which definition of "materiality" governs? Under the material amount of emissions definition, most registrants will be forced to calculate Scope 3 emissions even if they do not disclose the number just to determine whether they may be "material" in relation to all emissions. In addition, many registrants will likely disclose Scope 3 emissions even though not financially material to their business to avoid liability for potentially failing to meet this confusing definition. The Commission's commentary in the release regarding materiality is at odds with years of case law and practice. At the very least, this should be clarified in the rule. Ideally, materiality should be determined based upon whether emissions are financially material to the registrant rather than whether the amount of emissions itself is material. For instance, if a registrant violates New Source Performance Standards that the EPA regulates, the violation might be material to a registrant. However, simply determining that Scope 3 emissions are large (40% or more as the release suggests) in comparison to total emissions has no meaningful bearing on materiality to a registrant's business.

Further, the requirement to report "total" Scope 3 emissions is inconsistent with the ability to have and disclose gaps in a registrant's data and the wide range of estimating Scope 3 emissions pursuant to the rule. It is unclear given the definition of Scope 3 emissions in the regulation which third party emissions a registrant must count in the "total". What is clear is that most registrants are going to be forced to make wild guesses notwithstanding their good faith and reasonableness. How can wild guesses be material to investors?

An example: MRC Global purchases products from over 10,000 suppliers in 40 countries, most of whom have no emissions reporting requirements, data or processes. For each supplier, taking into account the "upstream" examples on page 180 of the release, what counts as a Scope 3 emission?

- Fuel consumed by third party transportation providers (as the release suggests)?
- Our suppliers' emissions in the production of the goods that we distribute (again, as the release suggests)?
- Our suppliers' sub-suppliers production emissions in making the component goods that our supplier purchases?
- The fuel consumed to move a sub-supplier's components to our suppliers?
- The emissions in the mining operations to mine the ore and other minerals used to make the metal products that our suppliers or their sub-suppliers produce?
- The fuel consumed to deliver the ore and other minerals to our suppliers and their sub-suppliers?

How far outside of "organizational boundaries" does a registrant need to roam to have total Scope 3 emissions? This must be clarified in the rule.

If Scope 3 emission disclosure becomes a reality, ideally a registrant should only report the Scope 3 emissions for which the registrant makes expenditures. So if a registrant outsources transportation to a transportation provider rather than providing transportation with its own fleet, the registrant will expense transportation in its financial statements. The registrant should need to report no further upstream than the emissions from the fuel consumed by the transportation for which the registrant pays. Even that calculation would require companies like MRC Global to invest substantially in IT systems to track the distance from the delivery point (which could be at the factory, the port or an MRC Global facility) and the type of transportation used (truck, train, rail, ship, air or a combination of those) for hundreds of thousands of purchases from 10,000 suppliers each year. The release and proposed rule do allow estimation so long as the methodology is disclosed. Thus, as an alternative to direct measurement, companies like MRC Global will need to invest in models to provide a good faith, educated estimate as to their Scope 3 emissions, which really would be a guess. How useful is this estimation? If merely an estimation, how material can it really be to investors?

Distributors like MRC Global have the same issues with "downstream" transportation. Our customers "receive" their product from us at our facility, the port or the customer's location. Sometimes we provide third party transportation; sometimes our fleet vehicles are used to deliver product; and sometimes the customer arranges the transportation. How does a registrant reasonably track or estimate Scope 3 emissions for these movements?

Other aspects of downstream emissions are even more ephemeral. Much of our product is steel. In the United States, a large portion of steel is recycled using electric arc furnaces. Even so, our products are often in service for long periods of time, sometimes decades. How does a registrant estimate end-of-life treatment by our customers? How could we ever know if they scrapped the products for recycling or put them in a land fill? In addition, many of the items that we sell are consumable, such as bottled water, shop towels and marking paint. The type and amount of these products vary widely from year to year and represent a small portion of our revenue. Even so, if registrants are required to report "total" Scope 3 emissions, estimates would likely be made for emissions from the consumption of these products.

Even the calculation of emissions from employee commuting is dubious. In this day and age of hybrid work, how is a registrant to know whether an office employee has commuted every day or worked from home? How does a registrant track commuting of sales employees who often leave home for a sales call rather than a fixed office? Should a registrant also track the commuting of its contractors, consultants, auditors and counsel? Employee commuting should not be included in Scope 3 emission disclosure requirements.

At the very least, only those emissions arising from activities for which the registrant pays should be included in Scope 3. This should exclude the cost of goods resold for distributors, retailers and others

that resell. The emissions for distributed products are controlled by their respective manufacturers. MRC Global cannot tell these manufacturers how to make their products. For MRC Global, this would eliminate most of these items except when MRC Global pays for delivery to its customers.

A quick review of the latest ESG reports of other distribution or retail registrants is instructive. Walmart only discloses Scope 1 and 2 emissions, although it has had significant initiatives to reduce GHGs in Walmart's supply chain for many, many years. Wesco also only discloses Scope 1 and 2 emissions. Grainger has yet to disclose Scope 3 emissions, but plans to do so in the next one to two years. Amazon does report Scope 3 emissions, but its reporting appears selective to certain activities. The proposed rule does not provide any guidance on how far upstream or downstream a registrant must report to comply with the requirement of disclosing "total" Scope 3 emissions. This is truly problematic. Currently, if they report Scope 3 emissions, each reporting company in their ESG report appears to selectively report Scope 3 emissions. How can a "total" be a "total" if each registrant selectively reports aspects of Scope 3 emissions but not all emissions? Will they be liable for a failure to report an up- or downstream activity? Who decides, and what is the decision standard? The proposed rules do not establish this, and the so called "materiality" standard is ill-defined.

In our view, the requirement to provide Scope 3 emissions will be an unreliable estimation process no matter how accurate a registrant attempts to make its processes to count these emissions. For instance, Amazon uses various models and reported averages to estimate its reported Scope 3 emissions. While done in good faith and on an educated basis, these estimations are only as good as the models or third party data upon which a registrant relies. Most registrants do not have the scientific or mathematic experts to vet these models and data. Certainly, a "peer review" process like in academia to vet these models and third party data sources does not exist. This sort of estimation is not useful to investors and will provide a false sense of accuracy regarding this information. We would urge the SEC not to include Scope 3 reporting in the final rule.

Financial Statement Proposed Rules Require Immaterial Disclosures. The requirements in the proposed rule (proposed Sections 210.14-01 and -02) for a registrant to disclose in its audited financial statements the financial impacts of climate change would require registrants to disclose burdensome, often immaterial information. The implied definition of materiality for this part of the proposed rule is 1% of the line item impact. This is completely contrary to the traditional notion of materiality and will require every registrant to calculate all impacts just to determine whether the 1% rule is met. If new financial statement disclosures are really needed, it would be better for the SEC to allow FASB to develop a reporting standard that is in line with traditional notions of materiality rather than the SEC imposing this requirement. Further, an overall financial materiality requirement should be included, so that immaterial line item and other disclosures are not included.

Corporate Transactions Are Not Addressed. Finally, the proposed rule does not contain a compliance period for when a registrant acquires another company. For instance, under SOX 404, the internal controls over financial reporting attestation does not apply for approximately one year when a registrant acquires another company. It takes time to fully bring the acquired company into the

reporting and control environment of the registrant. The proposed rules, if enacted, need a similar time period for a registrant to estimate the emissions and climate-related financial impacts of the acquired company. This is especially true for acquired companies that were privately owned prior to the acquisition as many of these companies would have no emissions reporting or climate change accounting. This sort of "holiday" would be needed from a practical point of view.

Burdensome Costs on Registrants and Investors. Given the complexity of this topic, it is stunning to see the poorly presented cost/benefit analysis in the release. On page 333 of the release, the Commission states "[i]n many cases, however, we are unable to reliably quantify these potential benefits and costs." Boy, that is an understatement. As described above, small cap registrants like MRC Global are going to incur substantial costs to count or estimate emissions and prepare immaterial financial statement disclosures if the proposed regulation becomes reality. The Commission's estimates in Section IV(C)2 of the release way underestimate the costs of compliance with the proposed release. The Commission estimates $640,000 in indirect costs plus $125,000 for consulting costs to calculate GHG emissions and $235,000 for assurance for a total of $1,000,000. Like the estimates for Scope 3 emissions, this amount is a wild guess. It does not take into account the cost of tracking software, the cost of modifying enterprise resource planning systems to collect data (such as third party transportation emissions) and the true costs of auditors, consultants and counsel. My wild guess (at least I admit it a guess), based on over 30 years as a securities lawyer and general counsel, is that MRC Global's first year of compliance will likely be twice that at $2 million or more. This is more in line with the first year of SOX implementation for companies our size.

The impacts go beyond mere costs (estimated above for MRC Global to be at least $2 million). At 20% gross margins, this means MRC Global's sales team would have to generate at least an additional $10 million in sales to pay for the first year of implementation. Said another way, to pay for this "investor protection", implementation of the proposed regulation would cost MRC Global's shareholders around three cents a share or $14 – 20 million in market capitalization at multiples of 7x to 10x EBITDA. Multiply market cap cost across all existing public companies, and the proposed regulation is very expensive indeed. For a small cap issuer like MRC Global, the dubious benefit of the proposed rule to investors is overwhelmed by the complexity and cost of compliance.

It is no wonder that we have heard from a number of small- and mid-cap company management teams that they are wondering if this sort of regulatory intrusion is worth remaining public. We suspect that many small companies will simply go private by selling to private equity funds or larger public companies. It should not be lost on the SEC that there are only about a third of the number of public companies today than there were when I began my career in the 1990s. The proposed regulation, if enacted in its present form, will likely continue the downward trend of the number of publicly traded companies. To pay for the cost of this regulatory intrusion, it takes larger companies with more revenue and bigger staffs to spread the cost over larger revenue bases. It is interesting that on the one hand, the FTC and Department of Justice are waging a war against large companies under the antitrust laws, but, on the other hand, the SEC is proposing an intrusive rule that is likely to increase the number of concentrated, large companies or increase the concentration of ownership in private equity funds.

Although the passive and large investment funds may be supportive of the proposed rule, we cannot imagine that many private equity funds are happy that the IPO exit for their investment is getting narrowed by administrative fiat by the increased costs.

Likewise, the cost/benefit analysis makes no mention on the impact of the millions of small suppliers and service providers that do not track GHG emissions. Private companies still make up the majority of the U.S. economy. If public companies need GHG information and small private companies cannot supply it, many small private companies are going to lose valuable customers. In addition to the large investment funds who are pushing for this regulation, the real winners of the proposed regulation will be the Big 4 accounting firms, law firms and consultants, all of whom are salivating at the prospect of earning big fees from registrants. We are not aware of any these firms providing any serious opposition to the proposed rule. In addition, it is interesting to us that the large investment firms have deep relationships to both SASB and the TCFD, both of which the Commission extensively quotes in the release. I draw your attention to the comment letter dated April 25, 2022 from a number of distinguished law professors led by Lawrence Cunningham. This letter makes a terrific case that "investor" protection is markedly different from the advocacy of the desires of just a few large investment funds.

Refocus on True Materiality. The energy transition is well under way and does not require the proposed regulation to accelerate it. The SEC should not tackle this issue except through the true lens of financial materiality. It certainly should not require Scope 3 (or even Scope 1 or 2) GHG emission disclosures. For those registrants who have the large investment funds as shareholders, the presence of those funds in their shareholder base is sufficient to cause them to provide information to them through separate ESG reporting as they do today. Material information about a registrant's business and risks is already required in filed documents, and registrants can provide immaterial information to their stakeholders through ESG and similar reports or in other communications. Actual climate change regulation should be undertaken either by Congress or agencies such as the EPA. The President should tackle climate change goals in the federal government by issuing appropriate executive orders. The analogies to SOX are misplaced. Congress passed, and the President signed into law, the SOX requirements, including the mandate that the SEC pass regulations to implement SOX 404. There has been no such legislation that Congress has passed for the climate change proposed rules.

There will, no doubt, be litigation around these proposed rules and the SEC's authority to implement them. We understand that the staff is taking great care to try to craft them in a manner that will survive judicial scrutiny. A financial materiality standard with a focus around the time frame of the statue of limitations for security suits (generally, two to five years, depending on the claim) is the only way of certainty. Without this lens, which the proposed rule does not meet, registrants will spend countless hours preparing for compliance while at the same time following the court and appellate process to determine which of their investors' money was spent preparing for an unenforceable rule. This has happened before. No doubt those of us still complying with the conflict minerals rule know that we are preparing seldom reviewed disclosure that was gutted but not eliminated by the courts. Even in that case, Congress passed, and the President signed into law as part of the Dodd-Frank Act, the requirement

that the SEC implement the conflict minerals disclosure rule. No such legal requirement is requiring the preposed climate change disclosure rule. The proposed rule will carry with it similar uncertainty.

Providing Ammunition to Activists and the Class Action Securities Bar. The proposed rules, if substantially implemented in the current form, will be a boon to activist investors and the securities class action bar. This is especially true given that the proposed disclosures will be filed rather than furnished, with all the attendant liability of filed documents. These actors will pick apart the emission estimation process. It is cold comfort indeed that the Commission has offered up the "protections" of the forward-look statement and Scope 3 estimation safe harbors. Activist and plaintiff lawyers will test the safe harbors and test them hard. This will result in increased legal defense costs, again coming out of shareholders' pockets.

Conclusion. Given the immateriality of emissions disclosures and the proposed financial statement changes for many registrants, we would strongly urge the Commission to either not move forward with the proposed rule or to severely limit the required disclosures to a financial materiality standard. At the very least, we would want the Commission to eliminate the Scope 3 emissions disclosure requirements, if not also the Scope 1 and 2 requirements when Scope 1 and 2 emissions are not financially material to a registrant's business. The Commission should not adopt a new "emissions materiality" standard. We would urge the Commission not to pass the new financial statement requirements; rather we would prefer that FASB review what might be required, if anything, under financial materiality standards. We would eliminate the requirement to have emissions data reviewed or audited. Rather issuers should state whether the data is audited or not and by whom. If these items are not eliminated, we would strongly urge the Commission to have these disclosures in separate furnished documents that are not subject to the same liabilities as filed documents.

Again, we appreciate the opportunity to provide these views of the proposed regulation.

Very truly yours,

Daniel J. Churay