June 14, 2022

Vanessa A. Countryman
Secretary, Securities and Exchange Commission
100 F Street NE, Washington, DC 20549-1090
https://www.regulations.gov/document/SEC-2022-0655-0001

Attention: RIN 3235-AM87 Proposed Regulation

By Federal eRulemaking Portal

Re: RIN 3235-AM87 and File Number S7-10-22, The Enhancement and Standardization of Climate-Related

Disclosures for Investors

Dear Secretary Countryman,

I write in response to a request for comments by the Securities and Exchange Commission on its proposed rule, "The Enhancement and Standardization of Climate-Related Disclosures for Investors" posted on April 11, 2022.

My name is Ellen R. Wald. I am a senior non-resident fellow at the Global Energy Center at the Atlantic Council and the founder and president of Transversal Consulting. Past appointments include visiting assistant professor at the University of Georgia, Majewski Fellow in Economic Geology at the American Heritage Center at the University of Wyoming, Visiting Scholar at the University of Cambridge, and lecturer at Boston University. I am a columnist on the energy industry and investing at investing.com. I earned my doctorate in history, with a focus on the energy industry, at Boston University, and my A.B. magna cum laude from Princeton University. The views I share in this letter are mine and do not represent those of any institution with which I am affiliated.

The proposed rule should not be adopted, because requiring companies to report greenhouse gas emissions (GHG emissions) is outside the scope of the mandate of the SEC and the rule, as proposed, will be ineffective and only serve to create a new regime—an industry—of auditors who are ultimately not beholden to accuracy and cannot be expected to be accurate.

Outside the Mandate of the SEC

The Securities Act of 1933 and the Securities Exchange Act of 1934 were enacted as a reaction to the financial catastrophes of the Wall Street Crash of 1929 and subsequent problems and the Great Depression. The statutes addressed misallocation of investment assets based, oftentimes, on poor or even deceptive information. In Section 2 of the Securities Exchange Act of 1934, the reason and purpose for the SEC was explained as follows:

> For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are effected

> with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, including transactions by officers, directors, and principal security holders, to require appropriate reports, to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto, and to impose requirements necessary to make such regulation and control reasonably complete and effective, in order to protect interstate commerce, the national credit, the Federal taxing power, to protect and make more effective the national banking system and Federal Reserve System, and to insure the maintenance of fair and honest markets in such transactions.[1]

Currently, the benefits and the necessity of requiring disclosures from publicly traded companies is widely if not universally accepted, as is the SEC's lawful role in regulating these disclosures. At question is whether the proposed requirement to disclose GHG emissions data is within the scope of the SEC's mandate. Does such a requirement serve, "to protect interstate commerce, the national credit, the Federal taxing power, to protect and make more effective the national banking system and Federal Reserve System, and to insure the maintenance of fair and honest markets in such transactions?" It does not.

The proposed rule would require three scopes of GHG emissions reporting for public companies. A public company would be required to report on its own GHG emissions from its own direct operations (Scope 1), GHG emissions from utilities consumed by its operations (Scope 2), and even its indirect GHG emissions including those of suppliers and from transportation of the company's goods (Scope 3). Such reporting would not serve to make the markets more transparent for investors or create a more sustainable environment for the banks or the credit of the country. That is because such reporting—if accurate, which is unlikely (see below)—is not necessary or useful to inform investors about climate-related risks.

Proponents of this proposed rule and similar regulation argue that such reporting is necessary for investors to make informed decisions about companies' exposure to climate change related risks. The first fault with this logic is the assumption that climate change presents direct risks to businesses in any reasonably approaching time frame. Would a minor and largely imperceptible rise in temperature (if it will happen) cause difficulties, changes, or even opportunities for a company? What if, in the extreme case, it takes another 8 decades for average temperatures to rise about 6 degrees?[2] Is that enough to impact businesses today? That is unlikely to be the case.

The disclosure of GHG emissions does not provide information about a company's exposure to climate related risks. Rather, the disclosure of GHG emissions explains a company's exposure to government regulation, not to the global climate. Since minor temperature changes are not likely to impact business operations in the relatively short term of an equity investment, and since GHG emissions, unlike water needs, for example, are not likely to be directly impacted by a changing climate, the real concern presented by GHG emissions is that the government will enact policies forcing companies to spend large amounts of money to curtail them. This makes GHG reporting

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[1] https://codes.findlaw.com/us/title-15-commerce-and-trade/15-usc-sect-78b.html
[2] Based on the most severe of three forecasts from the National Oceanic and Atmospheric Administration https://www.climate.gov/news-features/understanding-climate/climate-change-global-temperature.

a political issue, not a business issue. It is perhaps akin to the SEC requiring a company to report its connections to the Republican or Democrat party so that investors can decide if they think its business will be favored by an administration in power. This is not within the mandate of the SEC.

The Impossibility of Accurate Disclosures

The other reason that this proposed regulation should not be adopted is that it will be ineffective at informing investors of the GHG emissions associated with a company. The SEC specifically states that, "The disclosure of this information would provide consistent, comparable, and reliable—and therefore decision-useful—information to investors to enable them to make informed judgments about the impact of climate-related risks on current and potential investments."[3] However, it will be exceedingly difficult for any company to reliably calculate Scope 2 GHG emissions and impossible to reliably calculate Scope 3 GHG emissions.

Calculating Scope 2 emissions (those derived from the production of electricity that a company uses) and Scope 3 emissions (essentially the Scope 1 emissions of a company's direct and indirect customers and suppliers) are exceedingly difficult to accurately calculate. There are too many variables and too many assumptions and the gathered data is too imprecise. As the Harvard Business Review put it, in an April 2022 article, "Most companies know only a few of their non-tier-1 suppliers and customers well enough to get meaningful data from them." The authors describe measuring Scope 3 emissions as a "near impossibility."[4] Companies that do report Scope 2 and Scope 3 emissions almost always rely on industry averages for Scope 3 and regional averages for Scope 2. Even then, companies that currently voluntarily report Scope 3 emissions and use industry averages selectively report the emissions in order to portray their companies in the best light. For example, Google and Microsoft are in the same industry but they report vastly different indirect GHG emissions.

There is no way that companies can provide an accurate picture of their Scope 2 and Scope 3 emissions under the proposed regulation because such accounting is impossible. In fact, the SEC knows this because embedded within the regulation is a safe-harbor from any litigation that companies might face due to inaccurate Scope 3 reporting. It is unreasonable and irrational to require companies to spent time and money creating an inaccurate report that they cannot be held legally liable for. Rather than provide accurate disclosures of the GHG emissions associated with these businesses, this proposed regulation will only serve to create a new regime of auditors to model GHG emissions numbers as well as a likely explosion of purchases of carbon credits from companies that sell such products, such as Elon Musk's Tesla. It will also create a cottage industry of watchdog organizations whose only purpose is to pick apart corporate GHG emissions reports in order to vilify companies in the media.

According to the SEC itself, the added disclosure costs from this proposed rule will be $420,000 per year for a small publicly listed company and $530,000 per year for a larger firm. The firms

[3] https://www.govinfo.gov/content/pkg/FR-2022-04-11/pdf/2022-06342.pdf
[4] Robert S. Kaplan and Karthik Ramanna, "We Need Better Carbon Accounting. Here's How to Get There," Harvard Business Review, April 12, 2022. https://hbr.org/2022/04/we-need-better-carbon-accounting-heres-how-to-get-there

that provide these services—whether traditional auditors or new firms that spring up for this purpose—will be excited to reap the benefits even though they have no reasonable way to reliably calculate the required disclosures. Rather, they may very well be incentivized to err on the side of being conservative in order to maintain the relationship with the client and because no one can seriously dispute their estimates and guesses. The end result of the disclosure requirements for Scope 2 and Scope 3 emissions will be a transfer of a company's money to auditors and carbon credit sellers, plus largely inaccurate information GHG emissions that will not be useful to investors.

Sincerely,

Ellen R. Wald, Ph.D.