

By e-mail only: rule-comments@sec.gov

Ms Vanessa A. Countryman, Secretary
Securities and Exchange Commission

The Hague, 16 June 2022

Re: File Number S7-10-22.

Our ref: European Investors-VEB reaction to *The Enhancement and Standardization of Climate-Related Disclosures for Investors*

Dear Ms Countryman

European Investors-VEB (hereinafter VEB), a general interest association governed by Dutch law, prides itself in a track-record of almost 100 years of advancing the interests of the European investor community. This comprises representing investors in legislative and regulatory discussions on areas which directly impact their legal position and their investments.

VEB takes pleasure indeed in taking this opportunity to react to your proposal for public comment on *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (hereinafter the Proposal). Before anything else, this is because VEB wholeheartedly endorses the urgency and timeliness of the SEC's push towards the regulation of environmental disclosure. Phrased more informally, VEB finds we may not waste time. The Proposal therefore meets with VEB's applause.

Global convergence: VEB applauds the Proposal. Beyond anything else, the global community must strive to achieve the energy transition without delay. This requires optimal global convergence. It is therefore noted with regret that the U.S. and the EU devise their own sustainability reporting standards.

Materiality: whereas VEB appreciates that the SEC's definition of 'material' requires disclosure where there is a substantial likelihood that a reasonable investor would consider the specific information important when making an investment or voting decision, we recommend your endorsement of 'double materiality': companies have to disclose how sustainability issues affect their business and about their own impact on people and the environment.

Attestation/assurance: VEB is supportive of the requirement that, albeit with a phased-in approach, Scope 1 and Scope 2 emissions require third-party attestation. Over time, the level of attestation required will evolve to reasonable assurance. This is a key development.

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In what follows, VEB, naturally biased by its European perspective, may often refer to (future) European regulation. As will be apparent from the overall intent of our reaction, we have a definite preference for global standards, and, in any case, optimal global convergence. In saying this, we concede that the EU is set on a course to regulate for its own standards, the EU Corporate Sustainability Reporting Directive (hereinafter the CSRD) envisaging the adoption of *EU Sustainability Reporting Standards* – EFRAG having recently put out the first draft for such standards for consultation. With your proposal, the same applies for the U.S. VEB finds this a missed opportunity, unless it were clear ahead of time that either the U.S. or the EU fails to deliver or lacks in terms of ambition.

VEB understands that today's challenges demand a broader perspective on ESG-related regulation. It has become apparent in practice that - unfortunately - the needle is spinning in all directions. Listed companies submit insufficiently meaningful reports. Strategy, risks, and culture are not sufficiently linked to the long-term success of the company (long-term value creation) and ESG-aspects. Many companies report separately on strategy, ESG and long-term value creation, although the topics are clearly related. Companies also hide too much behind generalities and interchangeable texts. Investors need company-specific details about the value-creating assets, the identified ESG-risks and -opportunities and mitigating actions required.

Against the background of climate transition and adaptation, ESG-efforts are translating more rapidly into financial value creation in the form of, for example, more stable turnover, better profitability, higher returns on invested capital and lower financing costs. Regarding the latter category, investors expect companies to disclose how their activities affect the environment and society, what the concrete objectives are and what this means for the (future) cash flows. Listed companies must be incentivised to report clearly, concretely, and coherently in their reporting on the way that long-term value creation is implemented.

We need a new, inspiring, and guiding impetus regarding ESG and long-term value creation from the SEC. The addition 'material' positive external effects could, in our view, contribute to a certain 'good practice' and 'first mover' effect. A sharper assessment of opportunities and risks, a timely sense of urgency and the fact that companies demonstrably act can provide a competitive advantage. It contributes to a better reputation and performance; it opens doors to new intellectual and financial capital. All this acts as a catalyst for long-term value creation.

Shareholders are primarily focused on ESG initiatives and information with material impact on the value of the company. Against this background, VEB draws the attention to the concept of double materiality, as also defined in the CSRD. Transparent reporting on external positive and negative effects, even where they have no direct impact on the financial results for the time being, offers shareholders the opportunity to assess future legal and regulatory consequences.

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Our suggestion is to include explicitly that companies take responsibility for material effects, also prompted by the fact that material negative externalities should be considered by company management in every decision. The board will have to report specifically on this. The intended materiality can easily be specified in more detail. This will not only have to be expressed in financial variables, but also in other risks (strategic, operational, compliance and climate risks, more specifically the continuity of the licence to operate). These latter risks equally affect all stakeholders. Only with concrete insight into all these risks it can be assessed towards 2030 and 2050 whether a company is in control of each component individually and in combination.

For (institutional) investors, the importance of climate transition and adaptation is beyond dispute. Our impression is that, overall, management shows too little ambition in this regard. This is apparent, for example, from the lack of a suitable vision and ambition for the future. There must be more transparency about this, and it must be able to hold directors accountable for ignoring these future interests that are very relevant to everyone. The SEC is best positioned to take that guiding role in this.

It is clear to VEB that, as it stands, the global investor community does not have adequate climate-related disclosures at its disposal. This, by itself, is enough justification for regulatory action. On these grounds alone, VEB has difficulty to accept distractors' argument that the SEC does not have statutory authority. With the Proposal, the SEC promotes the protection of investors, the maintenance of fair, orderly and efficient markets, as much as it promotes capital formation.

VEB has, in so far as this is necessary, even greater difficulty to accept the argument of distractors who question whether climate risk poses a threat to companies or their investors. Suffice it, at this junction, to mention the IPCC's latest assessment report of 4 April 2022.

VEB feels that there is no time to be lost to broach the global community's challenges to face the climate transition. This presumes a concerted, participatory, inclusive, and effective approach, and it requires measures enabling intermediate measurability. We must avoid allowing any relevant parties dragging their feet and permitting the use of ambiguous language. In view of this, VEB is apprehensive of the push-back the Proposal encounters and the likelihood for it significantly to be watered down. Indeed, as we understand it, the Proposal being challenged in court is almost certain.

If we abstract from the Proposal's detailed content, VEB concurs with those who argue that these essential regulatory initiatives – of course under the premise that they make it to the finishing line – are a catalyst in mitigating climate change. Precisely the same point is made by the European Commission, where it moots that the CSRD and the EU Corporate

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Sustainability Due Diligence Directive are to be seen as synergetic and complimentary. We trust that mandatory environmental disclosure will drive corporate behavioural change, as much as we feel that it forms part of investors' toolkit to engage with companies.

The Proposal accommodates the disclosure of information concerning identified climate-related opportunities where it provides rules on governance, strategy and risk management. It is justly appreciated that such disclosures trigger anti-competitive concerns and that they are therefore treated as optional. VEB – in view of its constituencies' interests – should notice that climate risk is only part of the story. Whereas investors are likely to be more and more focused on climate-related opportunities, such upside potential merits not being overlooked.

To VEB, the Proposal's point of departure, getting decision-useful environmental information to investors which is consistent, comparable and reliable, strikingly sublimates the necessity of global convergence. With that, VEB should like to stress the importance it attaches to the International Sustainability Standards Board (here after ISSB) getting into stride. VEB therefore applaud the Technical Readiness development of the *Climate-related Disclosures Prototype*. VEB also have high expectations of the rapidly evolving regulatory landscape in the European Union. We have already referred to the CSRD and the EU Corporate Sustainability Due Diligence Directive. Worthy of note is that the latter mandates disclosure of companies' plans to ensure that their business models and strategies are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement. Without being exhaustive, we would also point to the EU Sustainable Finance Disclosure Regulation, and the EU Taxonomy Regulation.

VEB notes, with due appreciation, that the Proposal heeds international efforts to achieve greater consistency, and that it fosters global convergence – notably by alignment with the TCFD (which, as the Proposal also mentions, integrates and encapsulates the GHG Protocol). The Proposal expresses the concern that the proliferation of third-party reporting frameworks contributes to fragmentation and, hence, makes it difficult for investors to use sustainability disclosures, because they lack consistency and comparability. It is precisely for that reason that the Proposal takes the TCFD as a point of departure – noting the global convergence of investors and issuers around the TCFD. And the Proposal mentions that the TCFD also forms the framework for the *Climate-related Disclosures Prototype* likely to be the ISSB's stepping stone.

As said before, to VEB, global convergence is key. Thus, in principle we support the Proposal's approach. We stress that the global effort requires all key parties – thus including the SEC – buying into the ISSB. We therefore advocate for the Proposal to provide that only reports made pursuant to the ISSB criteria, and, if desired, those reports adopted by jurisdictions subscribing to the ISSB criteria, qualify under your alternative reporting regime.

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VEB applauds the requirement that Scope 3 emissions are to be disclosed. This development reflects an increasing recognition that Scope 3 emissions are an important component of investment-risk analysis because, for most companies, they represent by far the largest portion of a company's carbon footprint. We can understand that the Proposal provides for a safe-haven. It is likely indeed that companies may not be able to obtain faithful measures, given that they cannot but rely on third parties. Of course, when companies exclude Scope 3 emissions, they must state the reasons for doing so.

VEB equally very much welcomes the stepwise approach toward attestation, which it sees as being essential. After the first two years, attestation would be required to be at a reasonable assurance level. Attestation would not be required for Scope 3 emissions disclosure. However, if voluntarily obtained, it would be required to satisfy the same standards as attestation relating to Scope 1 and Scope 2 emissions disclosures. The attestation report would need to be provided by an independent firm qualified to do so. It would not need to be a PCAOB-registered accounting firm.

We are more than pleased to hold ourselves available for any comments or questions you may have.

Yours sincerely
European Investors-VEB

Gerben E. Everts
Executive Director

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