June 16th, 2022

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors (Release Nos. 33-11042, 34-94478; File No. S7-10-22)

Dear Ms. Countryman:

The Small Business Investor Alliance (SBIA) submits these comments in response to the Securities and Exchange Commission's (SEC) proposed rules regarding climate change disclosures (Proposal). The SBIA is concerned about the Proposal's implications for small, private businesses that would bear significant compliance burdens if the proposed rules were to go into effect. We are also concerned that, as drafted, the Proposal's mandates would apply to business development companies (BDCs), which are a critical source of capital middle market businesses.

The SBIA is the leading national association that develops, supports, and advocates on behalf of policies that benefit providers of capital to small and mid-size American businesses. SBIA's membership includes BDCs, private equity investment funds, as well as the institutional investors that invest in those funds. SBIA's public policy goals are focused on maintaining a robust, healthy, and competitive market for small business investing in America. SBIA is not hostile to all regulations, and we support regulations that promote a healthy and transparent market.

However, the Proposal represents a far-reaching and unprecedented effort by the SEC to expand reporting obligations regarding the effects of climate change on businesses' operations. While the Proposal is ostensibly intended to apply to public companies, it would have significant downstream consequences for private businesses that are either customers of public companies or part of a supply chain and would have to provide issuers with granular emissions data. The Proposal would also inappropriately apply to BDCs given the nature of these businesses as a managed portfolio of investments with statutorily required diversification, significantly increasing compliance costs and inhibiting the ability of BDCs to deploy capital to middle market businesses.

The SEC has failed to consider many of these indirect consequences of the rule and how private businesses in particular will be impacted. Accordingly, we urge the SEC to delay any consideration of a final rule until it has properly considered and assessed how the Proposal will affect small business capital formation, job creation, and economic growth. A careful approach is even more important given this precarious and increasingly fragile period for the American economy, and at a time when small business confidence is reaching lows not seen since the onset of the pandemic in 2020.[1]

Our concerns regarding the Proposal are described in more detail below.

I. The SEC has not provided the public with sufficient time to comment on this and other rule proposals and has not properly considered the cumulative impact of all new rules it is considering.

This year alone, the SEC has issued eighteen rule proposals that collectively impact every corner of the American capital markets. Yet to date, the SEC has not analyzed or made any effort to determine the cumulative effect these rules will have upon economic activity. This is especially confounding given the fragile state of the U.S. economy and recent volatility in the markets.

Even more concerning, the SEC has not allowed the public with the time necessary to digest, analyze, and provide informed feedback on extremely complex and intricate rule proposals. The apparent new standard of allowing the public only thirty (30) days to comment on rules is insufficient and a troubling precedent for the SEC going forward.

While the SEC did recently provide an extension of the comment period for the Proposal, given the breadth and scope of the issues it presents, along with the potential application of new measures and concepts not previously embedded in the operation of most companies, we urge the SEC to provide additional time for comments to be submitted. By the SEC's own estimation, the Proposal could impose over $10 billion in compliance costs on registrants. However, this estimate does not incorporate all of the *indirect* costs that will likely fall on private businesses and those entities not registered with the SEC. A rulemaking this consequential should not be rushed based upon arbitrary or politically-motivated timeframes.

II. The proposed rules should not apply to business development companies (BDCs).

The Proposal requests comment on whether certain types of registrants, such as emerging growth companies (EGCs) and BDCs, should be exempt from the climate-related disclosures. We appreciate the opportunity to remind the Staff that while the "EGC" designation describes the status of certain newly public reporting companies, BDCs are a type of investment company that is required to focus its investment activities to support private U.S.-headquartered businesses.

[1] Small Businesses Lose Confidence in U.S. Economy. Wall Street Journal (May 22, 2022) https://www.wsj.com/articles/small-businesses-lose-confidence-in-u-s-economy-11653211803?mod=Searchresults_pos3&page=1

While we believe that there is cause for excepting EGCs and BDCs from the reporting burdens imposed by the Proposal, the justifications are completely different.

"Emerging Growth Company" is a distinction created in connection with implementing the 2012 Jumpstart Our Business Startups (JOBS) Act, which was meant to relax barriers to accessing public capital markets. EGCs were granted temporary relief from some of the more costly consequences of being a public company, namely auditor attestation of internal controls over financial reporting. The important thing to note is that any newly public company can be an EGC. For example, a newly public upstream oil and gas company might have extensive relevant climate-related information but would benefit from relief during the time it qualifies as an EGC.

BDCs, on the other hand, are a type of specialty finance company that invest a majority of their assets in "eligible portfolio companies", mainly private businesses organized and operated in the United States. BDCs are investment companies that report financial information on the same forms that operating companies use. Unlike the EGC designation, being a BDC is not a temporary designation – it is an election, changeable only by shareholder vote, to engage in a certain type of investment activity. By the nature of its business, a BDC will not have any more relevant emissions related information to disclose than would a mutual fund or closed-end fund. Subjecting BDCs to the disclosure requirements in the Proposal would subject BDCs to additional compliance costs without generating meaningful or useful information for investors.

Subjecting BDCs to the disclosure obligations under the Proposal could additionally impose reporting burdens on the private businesses that make up a BDC's portfolio. While the Proposal alleges that "financed emissions of an asset manager include greenhouse gas emissions aggregated across portfolios," we respectfully advise the SEC that the vast majority of signatories to the Partnership for Carbon Accounting Financial (PCAF) are commercial banks that more frequently support large-cap businesses. Any rules subjecting BDC portfolio companies to the same reporting obligations as large-cap public companies would not only subvert the BDC's purpose but would present a significant challenge to the already underserved lower and middle market.

The SEC also has recognized the importance of BDCs in previous regulations. For example, when the SEC implemented offering reform in 2005, it specifically excluded BDCs from various reform provisions because the SEC believed that the BDC-related reforms should be considered "in the context of a broader reconsideration of the separate framework applicable to such issuers."[2] We believe that the SEC should use the same wait-and-see approach until it is able to fully consider the Proposal in light of the special operational and other considerations applicable to BDCs.

The SEC has already separately addressed environmental, social, and governance (ESG)-related disclosures by investment companies and advisers in a separate rulemaking proposal. This proposal would require new disclosures from regulated funds and BDCs regarding ESG issues,

[2] Securities Offering Reform, Securities Act Release No. 8591 (July 19, 2005), 70 FR 44721, 44741 (Aug. 3, 2005); *see also id.* at 44735 (noting that BDCs are "subject to a separate framework governing communications with investors, and we believe that it would be more appropriate to consider investment company issues in the context of a broader reconsideration of this separate framework."); *id* at 44778 (similar statement).

including issues related to climate change.[3] This alternative proposal more appropriately treats the business of a BDC consistently with other investment focused entities.

III. The SEC has not properly considered the burdens that the Proposal is likely to impose upon non-registrants, including private businesses that will bear many of the costs of compliance.

The Proposal would require public companies to report information regarding Scope 1 and Scope 2 emissions, along with Scope 3 information for companies that have established a greenhouse gas emissions reduction goal or where Scope 3 disclosures would be material. As other commenters have pointed out, the materiality "threshold" used in the Proposal is amorphous and most companies will likely feel obligated to report Scope 3 information.

For many public companies, gathering Scope 3 information will entail collecting standardized and detailed data from thousands of suppliers and customers, many of which are private businesses that do not report to the SEC or collect the type of data that would be required under the Proposal. For private businesses that play an integral role in the supply chain of large public companies, the costs of compliance with the Proposal – and to provide reporting companies with the information needed to satisfy the SEC's rule proposal – could be enormous. Inexplicably, the Proposal and the accompanying economic analysis fail to properly consider these ripple effects and costs that will spread throughout a public company's supply chain.

The Proposal also could have the effect of placing pressure on private businesses to abide by certain practices or to assist public companies in reducing their own Scope 3 emissions. As Commissioner Peirce recently noted at a meeting of the SEC's Small Business Capital Formation Advisory Committee:

> The proposal's effects will extend to small private companies. To calculate their Scope 3 emissions, public companies inevitably will demand that private company suppliers supply them with climate data. Public companies may do more than demand data. The Commission bluntly stated "[a]lthough a registrant may not own or control the operational activities in its value chain that produce Scope 3 emissions, it nevertheless may influence those activities, for example, by working with its suppliers and downstream distributors to take steps to reduce those entities' Scopes 1 and 2 emissions (and thus help reduce the registrant's Scope 3 emissions) and any attendant risks." What will the costs be for small private companies to reduce their emissions to improve the public image of their public company counterparties at the behest of the Commission?[4]

A recent survey also found that 99% of public companies report that their suppliers – many of which are private businesses – do not provide reliable information that could be used to estimate Scope 3 emissions.[5] This makes compliance with the Scope 3 requirement either impossible or extremely costly for private businesses that would have to collect and provide this information to reporting companies. The SEC must reassess its economic analysis and approach to the Proposal given the significant costs that are likely to fall upon private businesses.

---

[3] Environmental, Social, and Governance Disclosures for Investment Advisers and Investment Companies. (May 25th, 2022).

[4] Remarks at SEC Small Business Capital Formation Advisory Committee Meeting (May 6th, 2022) https://www.sec.gov/news/speech/peirce-sbcfac-20220506

[5] See June 14th, 2022 letter from Nasdaq.

Conclusion

The SBIA recommends that the SEC withhold consideration of a final rule until the full scope and economic impact of the Proposal can be properly assessed. We look forward to serving as a resource to SEC commissioners and staff on this critical issue.

Sincerely,

Brett Palmer

Brett Palmer
President
Small Business Investor Alliance