IBC
INTERNATIONAL BANCSHARES
CORPORATION

June 16, 2022

Via Online Form Submission

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

Re: File No. S7-10-22, Comments to Proposed Rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Ms. Countryman,

The following comments are submitted on behalf of International Bancshares Corporation ("IBC"), a publicly-traded, multi-bank financial holding company headquartered in Laredo, Texas. IBC maintains 167 facilities and 261 ATMs, serving 75 communities in Texas and Oklahoma through five separately chartered banks ranging in size from approximately $480 million to $9.3 billion, with consolidated assets totaling over $16 billion. IBC is one of the largest independent commercial bank holding companies headquartered in Texas.

This letter responds to the request of the Securities and Exchange Commission (the "SEC") for comment on its nearly 500-page proposal to mandate, enhance, and standardize certain climate-related disclosures to be made by SEC registrants in their registration statements and periodic reports (the "Proposal").

Specifically, under Regulation S-K, the Proposal would require a registrant to disclose: (i) the climate-related risks that the registrant faces; (ii) the processes that the registrant has implemented to identify, evaluate, oversee, and govern climate-related risks and the extent to which such processes have been integrated into the registrant's overall risk-management system; (iii) the actual or likely, short-, medium-, or long-term, material impact of any identified climate-related risks on the registrant's business, strategy, outlook, financial condition, or results of operations; (iv) the impact of climate-related events and transition activities on the line items of a registrant's consolidated financial statements and related expenditures; (v) the greenhouse gas ("GHG") emissions that the registrant produces both directly ("Scope 1") and indirectly from purchased electricity and other energy forms ("Scope 2"); (vi) the indirect GHG emissions from upstream and downstream activities ("Scope 3") in the registrant's value chain or included in any GHG-emissions target set by the registrant; and (vii) the scope, status, and progress of any climate-related target or goal that the registrant has publicly set. Further, under Regulation S-X, the Proposal would require the disclosure of certain disaggregated climate-related financial-statement metrics in a note to the registrant's financial statements.[1]

[1] The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release Nos. 33-11042; 34-94478, 87 Fed. Reg. 21334 (proposed Apr. 11, 2022) (the "Proposal").

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For the reasons set forth below, IBC strongly opposes the SEC's quasi-legislative implementation of the Proposal and the climate-related disclosures that would be mandated by the Proposal if it is implemented.

(I) The prescriptive measures taken in the Proposal far exceed the SEC's rulemaking authority and stated mission. The pretext of "investor demand" does not give the SEC carte blanche permission to regulate beyond its statutory bounds or to infer legislative power that belongs to Congress.

The SEC's power to promulgate legislative regulations is confined to the authority that Congress has delegated to it.[2] There are several ways that Congress can control and limit a federal agency's authority, such as restricting the agency's jurisdiction or establishing policy goals that the agency must strive to fulfill when exercising the authority that it has been delegated.[3] "The more precise a delegation, the less discretion is afforded to the agency in its execution of its delegated authority."[4] Overall, Congress has given the SEC considerable latitude to carry out its "mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation[.]"[5] However, the SEC's exercise of legislative authority is not limitless.[6]

When a challenge is made to an agency's construction of a statute that it has been delegated the authority to administer, two questions must be asked: "First, always, is the question of whether Congress has directly spoken to the precise question at issue[,]" in which case "the unambiguously expressed intent of Congress" must be given effect.[7] If instead "the statute is silent or ambiguous with respect to the specific issue," the second question "is whether the agency's answer is based on a permissible construction of the statute."

Applying that two-step analysis to the Proposal, (1) Congress has never directly spoken to the issue of whether climate change is in the SEC's regulatory jurisdiction or, more specifically, whether the SEC is authorized by Congress to require "climate-related disclosure items and metrics to elicit investment decision-useful information that is necessary or appropriate to protect investors,"[8] and (2) In the absence of Congress's express direction to regulate climate-related matters, the SEC's attempt to do so under the guise of "investor protection" is an impermissible construction of the statutes under which the SEC is authorized to act.

In contrast, Congress has expressly charged the Environmental Protection Agency (the "EPA") with the type of authority that the SEC attempts to exercise under the Proposal. In fact, when

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2 *See* Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208 (1988) ("It is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress.").

3 *See* Todd Garvey & Daniel J. Sheffner, Cong. Rsch. Serv., R45442, Congress's Authority to Influence and Control Executive Branch Agencies 9 (2021), https://sgp.fas.org/crs/misc/R45442.pdf (describing the methods of control that Congress can exert over a federal agency, including "by detailing its jurisdiction and authority, setting policy goals for the agency to accomplish in the exercise of that authority, and choosing whether it may regulate the public").

4 *Id.*

5 Securities Exchange Act of 1934 § 40(a)(2)(A), 15 U.S.C. § 78qq(a)(2)(A).

6 U.S. Const. art. I, § 1 ("All legislative Powers herein granted shall be vested in a Congress of the United States . . . ."). *See* Gundy v. United States, No. 17-6086, slip op. at 5 (2019) (plurality opinion) ("The constitutional question is whether Congress has supplied an intelligible principle to guide the delegee's use of discretion.").

7 Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837, 842 (1984).

8 Proposal, *supra* note 1, at 23.

urging Congress to establish the EPA in 1970, President Richard M. Nixon envisioned the very type of conflict created by the Proposal—where one federal agency oversteps its statutory authority in an attempt to regulate environment-related matters that are beyond its delegated authority. As President Nixon explained:

> [T]he arguments against placing environmental protection activities under the jurisdiction of one or more of the existing departments and agencies are compelling.
>
> In the first place, almost every part of government is concerned with the environment in some way, and affects it in some way. Yet each department also has its own primary mission—such as resource development, transportation, health, defense, urban growth or agriculture—which necessarily affects its own view of environmental questions. . . .
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> Because environmental protection cuts across so many jurisdictions, and because arresting environmental deterioration is of great importance to the quality of life in our country and the world, I believe that in this case a strong, independent agency is needed.[9]

The SEC's primary mission involves regulating the marketplace, not the environment. The GHG reporting requirements that would be implemented under the Proposal are duplicative of GHG-emission reporting that the EPA already conducts.[10] If Congress intended for the SEC to delve into environmental protection or climate-change policy, it could have delegated the EPA's authority to the SEC. As the EPA understands, "addressing climate change is critical to EPA's mission of protecting human health and the environment. EPA tracks and reports [GHG] emissions, leverages science, and works to reduce emissions to combat climate change."[11] Absent congressional delegation, questions related to climate change and GHG emissions do not concern the SEC or its stated mission.[12] As former SEC Chairman Jay Clayton opined, "Taking a new, activist approach to climate policy—an area far outside the SEC's authority, jurisdiction and expertise—will deservedly draw legal challenges. What's worse, it puts our time-tested approach to capital allocation, as well as the agency's independence and credibility, at risk."[13]

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9 Special Message from the President to the Congress About Reorganization Plans to Establish the Environmental Protection Agency and the National Oceanic and Atmospheric Administration, 215 PUB. PAPERS 578 (July 9, 1970), https://archive.epa.gov/epa/aboutepa/reorganization-plan-no-3-1970.html.

10 Jennifer J. Schulp & William Yeatman, Opinion, *Climate-Risk Disclosure, Let Me Count the Ways*, THE HILL (June 8, 2022, 5:00 PM), https://thehill.com/opinion/congress-blog/3516475-climate-risk-disclosure-let-me-count-the-ways/ ("[T]he Environmental Protection Agency—actually tasked with protecting the environment—already requires emissions reporting. Even though EPA requirements capture 85-90 percent of emissions, the SEC seeks to require more detailed disclosures for public companies, perplexingly implying that investors' needs are greater than the EPA's.").

11 U.S. ENV'T PROT. AGENCY, *Climate Change*, https://www.epa.gov/climate-change (last updated June 8, 2022).

12 The issue of regulatory overlap is not new. In a 1981 report to Congress, the U.S. General Accounting Office explained that one "source of regulatory conflict and overlap is the manner in which regulatory agencies exercise their authority" and "fail to coordinate regulatory actions with each other." U.S. GOV'T ACCOUNTABILITY OFF., PAD-81-76, GAINS AND SHORTCOMINGS IN RESOLVING REGULATORY CONFLICTS AND OVERLAPS at (iii) (1981), https://www.gao.gov/assets/pad-81-76.pdf. Such overlap would occur if the Proposal is implemented.

13 Jay Clayton & Patrick McHenry, *The SEC's Climate-Change Overreach*, WALL ST. J. (Mar. 20, 2022, 4:37 PM), https://www.wsj.com/articles/the-secs-climate-change-overreach-global-warming-risks-lawmakers-invertors-market-data-11647801469.

(II) The SEC's claim that the Proposal is driven by widespread investor demand is not supported by research regarding the priorities of retail investors—the class of investors whose interests the SEC should be focused on advancing and protecting.

As justification for the Proposal, Chair Gary Gensler urged: "Today, investors representing literally tens of trillions of dollars support climate-related disclosures because they recognize that climate risks can pose significant financial risks to companies, and investors need reliable information about climate risks to make informed investment decisions."[14] Chair Gensler is correct—BlackRock, Vanguard, and State Street, the three largest American asset management firms, control upwards of "$20 trillion and vote nearly one-quarter of all shares cast at corporate annual meetings to support social agendas disfavored by many Americans whose money they manage."[15]

The so-called Big Three manage assets equal to "more than half of the combined value of all shares for companies in the S&P 500 (about $38 trillion)."[16] Each of these institutional asset managers have made climate change a top priority,[17] warning against the threat of GHG emissions[18] and advocating for the need to protect investors from climate risks.[19] Some push nearly identical political talking points as those made in the Proposal.[20]

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[14] Chair Gary Gensler, Statement on Proposed Mandatory Climate Risk Disclosures (Mar. 21, 2022), https://www.sec.gov/news/statement/gensler-climate-disclosure-20220321.

[15] Vivek Ramaswamy & Riley Moore, Opinion, *The Market Can Curtail Woke Fund Managers*, WALL ST. J. (June 9, 2022, 12:58 PM), https://www.wsj.com/articles/the-market-can-curtail-woke-fund-managers-index-act-votes-shareholders-11654786033.

[16] Farhad Manjoo, Opinion, *What BlackRock, Vanguard, and State Street Are Doing to the Economy*, N.Y. TIMES (May 12, 2022), https://www.nytimes.com/2022/05/12/opinion/vanguard-power-blackrock-state-street.html (arguing that the Big Three asset management firms "control too much of the global economy," with BlackRock managing nearly $10 trillion in investments, Vanguard managing $8 trillion, and State Street managing $4 trillion).

[17] *See e.g., Larry Fink's 2022 Letter to CEOs: The Power of Capitalism*, BlackRock, https://www.blackrock.com/us/individual/2022-larry-fink-ceo-letter (last visited June 14, 2022) ("*Larry's Finks 2022 Letter to CEOs*") ("We focus on sustainability not because we're environmentalists, but because we are capitalists and fiduciaries to our clients.").

[18] State Street, Climate Compendium 5 (2021), https://www.statestreet.com/content/dam/statestreet/documents/esg/climate-compendium.pdf (warning of the need to tackle the "climate emergency" and explaining that "[g]overnments and international bodies will have to implement change fast to have the required impacts and cut emissions").

[19] *Vanguard's Approach to Climate Change*, VANGUARD (Apr. 21, 2022), https://institutional.vanguard.com:443/VGApp/iip/site/institutional/researchcommentary/article/InvComVanguardsApproachToClimateChange ("Vanguard considers climate change—and the evolving global policy responses required to mitigate its impact—to be a material and fundamental risk to companies and to their shareholders' long-term financial success. Accordingly, we have an important role to play in engaging and encouraging real progress by portfolio companies to mitigate the potential consequences of climate change. This is our fiduciary duty.").

[20] *Compare Larry Fink's 2022 Letter to CEOs*, *supra* note 17 ("As part of that focus [on sustainability], we are asking companies to set short-, medium-, and long-term targets for greenhouse gas reductions. These targets, and the quality of plans to meet them, are critical to the long-term economic interests of your shareholders. It's also why we ask you to issue reports consistent with the Task Force on Climate-related Financial Disclosures (TCFD): because we believe these are essential tools for understanding a company's ability to adapt for the future."), *and Endorsing Climate Change Disclosure,* STATE STREET (Oct. 2021), https://www.statestreet.com/ideas/articles/endorsing-climate-change-disclosure.html ("Within the last year, there has been significant progress in the endorsement and adoption of the TCFD framework. State Street is pleased with the progress in TCFD endorsement, and is committed to helping companies adopt and implement TCFD disclosures. State Street endorses TCFD principles as a strong, investor-led framework for reporting on climate change risk."), *with* Proposal, *supra* note 1, at 41 ("The proposed climate-related disclosure framework is modeled in part on the

The SEC overstates the investor demand purportedly driving the Proposal and fails to consider that the climate-conscious ideology of the largest institutional investors, which focuses on environmental, social, and governance ("ESG") principles, does not reflect the priorities of the vast majority of the ordinary retail investors that the SEC has a duty to protect. In reality, the demand for climate-related disclosures is localized at the institutional-investor level, with the Big Three asset managers dutifully politicizing the climate-change issue on behalf of the Biden Administration. The SEC's "one-size-fits-all" approach to understanding what matters to investors when making investment decisions equates the priorities of *some* with the priorities of *all*, wrongfully assuming that average investors care about climate-related risks to the same extent as institutional elites and that all shareholders across all industries consider climate change to be a key factor when evaluating a public company.

As one study found, "ESG disclosures are irrelevant to retail investors' portfolio allocation decisions."[21] Similarly, a recent Gallup poll found that while 78% of investors give considerable attention to the expected rate of return when deciding which investments to make, only 35% research a company's environmental record or impact.[22] Further, a mere 13% of investors reported doing "a lot of research on any of the ESG factors."[23] Another study conducted by FINRA echoed these findings, finding, for example, that "[i]n aggregate, retail investors indicate environmental aspects are the least important considerations relative to social, governance and financial considerations when making investment decisions."[24]

Thus, it is clear that the interests the SEC cares to protect and advance are not those of individual retail investors, but those of the already powerful, politically driven class of institutional investors. Although the Proposal purports to respond to investors' concerns, the Proposal is actually a genuflection to the political agenda of the Biden Administration and the Democratic Party's "whole-of-government approach to the climate crisis."[25]

TCFD's recommendations, and also draws upon the GHG Protocol. In particular, the proposed rules would require a registrant to disclose information about: . . . the registrant's climate-related targets or goals, and transition plan, if any.").

21 A. Moss, J.P. Naughton, C. Wang, The Irrelevance of ESG Disclosure to Retail Investors: Evidence from Robinhood (June 12, 2020) (working paper), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3604847 [https://perma.cc/E4XU-B9EC].

22 Lydia Saad, *Where U.S. Investors Stand on ESG Investing*, GALLUP (Feb. 23, 2022), https://news.gallup.com/poll/389780/investors-stand-esg-investing.aspx.

23 *Id.*

24 FINRA, CONSUMER INSIGHTS: MONEY & INVESTING, *Investors Say They Can Change the World, If They Only Knew How: Six Things to Know About ESG and Retail Investors* 4 (Mar. 2022) https://www.finrafoundation.org/sites/finrafoundation/files/Consumer-Insights-Money-and-Investing.pdf ("For all retail investors in our sample (whether they hold ESG investments or not), financial factors (i.e., investment returns, fees, risk and tax matters) are most important when making investment decisions."). *See also id.* at 2 (reporting that only 21% of study respondents knew what the acronym "ESG" stood for, with 25% of the sample mistakenly believing that ESG stands for "Earnings, Stock, Growth").

25 Remarks on Efforts To Combat Climate Change, Create Jobs, and Promote Scientific Integrity, 2021 DAILY COMP. PRES. DOC. 93 (Jan. 27, 2021), https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/01/27/remarks-by-president-biden-before-signing-executive-actions-on-tackling-climate-change-creating-jobs-and-restoring-scientific-integrity/ ("Now, the Biden-Harris administration is going to do it again and go beyond. The executive order I'll be signing establishes a White House Office of Domestic Climate Policy. . . . As the head of the new office and my National Climate Advisor, Gina [McCarthy] will chair a National Climate Task Force, made up of many members of our Cabinet, to deliver a *whole-of-government approach* to the climate crisis. . . . While the *whole-of-government approach* is necessary, though, it's not sufficient. We're

(III) While the SEC states that the Proposal will "provide investors with consistent, comparable, and decision-useful information" about climate risks that the SEC alleges investors need to "make informed investment decisions,"[26] the information elicited by the Proposal will be overwhelming in scope, convoluted in substance, overstated in relevance, and far removed from the longstanding notions of materiality that ordinarily guide companies' disclosures—thus undermining investors' ability to meaningfully evaluate the disclosures made. Although the SEC states that the Proposal will "help issuers more efficiently and effectively disclose [climate-related] risks and meet investor demand"[27] and "will promote efficiency, competition, and capital formation[,]"[28] the Proposal would likely have the opposite effect, and be extremely expensive, which cost will ultimately be borne by shareholders.

What constitutes a disclosure-worthy risk for one company may not be disclosure-worthy for another.[29] The disclosure requirements under Regulation S-K provide a sufficient means for certain companies to disclose environmental matters as material risk factors without needlessly requiring all companies to do so.[30] Yet the Proposal forces a "one-size-fits-all" regulatory regime on thousands of public companies, even though most would not consider carbon emissions to be materially relevant to financial performance.[31]

Any benefit of complying with the Proposal will be undermined by the extreme costs of compliance and the burden of indirect costs, such as business disruptions that will result from requesting Scope 3 GHG emission data from downstream customers. Both of those issues will disproportionately harm small companies, discourage private companies from entering the public market, and stifle capital formation. When assessing whether companies should be required to make the sweeping disclosures called for by the Proposal, the SEC skews the cost-benefit analysis in favor of climate-risk reporting.

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going to work with mayors and governors and tribal leaders and business leaders who are stepping up, and the young people organizing and leading the way.") (emphasis added).

26 Chair Gary Gensler, *supra* note 14.

27 *Id.*

28 Proposal, *supra* note 1, at 23.

29 *See* Comm'r Hester M. Peirce, Statement, *We are Not the Securities and Environment Commission - At Least Not Yet* (Mar. 21, 2022), https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321 ("Current SEC disclosure mandates are intended to provide investors with an accurate picture of the company's present and prospective performance through managers' own eyes. . . . The proposal, by contrast, tells corporate managers how *regulators*, doing the bidding of an array of non-investor stakeholders, expect them to run their companies. It identifies a set of risks and opportunities—some perhaps real, others clearly theoretical—that managers *should be* considering and even suggests specific ways to mitigate those risks. It forces investors to view companies through the eyes of a vocal set of stakeholders, for whom a company's climate reputation is of equal or greater importance than a company's financial performance.") (footnote omitted).

30 *See, e.g.*, Item 101 of Regulation S-K, Description of Business, 17 C.F.R. § 229.101(c)(2)(i) (requiring companies to disclose the "material effects that compliance with government regulations, including *environmental regulations*, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries, including the estimated capital expenditures for *environmental control facilities* for the current fiscal year and any other material subsequent period") (emphasis added).

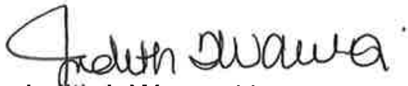
31 The Editorial Board, Opinion, *Gary Gensler Stages a Climate Coup*, WALL ST. J. (Mar. 21, 2022, 7:10 PM), https://www.wsj.com/articles/gary-gensler-stages-a-climate-coup-securities-and-exchange-commission-blackrock-11647899043 ("SEC Chairman Gary Gensler is redefining materiality as whatever BlackRock and progressive investors want to know.").

According to the SEC's own estimates, a smaller reporting company ("SRC") can expect to spend $490,000 in the first year of compliance ($140,000 for internal costs and $350,000 for outside professional costs), and $420,000 ($120,000 on internal costs and $300,000 on outside professional costs) annually in subsequent years.[32] Non-SRC registrants should anticipate the costs of complying with the Proposal to be $640,000 in the first year of compliance ($180,000 for internal costs, $460,000 for outside professional costs) and $530,000 on annual compliance costs in subsequent years. For companies that are starting without any climate reporting regime, the SEC's projected costs are likely significantly understated. As one former SEC official explained, "For companies that are starting from scratch in reporting climate data, complying with the rules could be more expensive than the SEC estimates. It will involve creating new systems to collect, analyze and report the data needed and potentially hiring new staff, consultants and auditors."[33]

For the reasons set forth above, IBC strongly opposes the Proposal. Mandating climate change disclosures would politicize the SEC's role in regulating the financial industry under the guise of market and investor protection. While reducing the impact of climate change is a laudable effort, it should not be mistaken as a top priority for all companies or investors. IBC strongly recommends that the SEC continue to act as an apolitical regulatory body and resist the pressure to prostrate to partisan declarations of social sentiment by rejecting the implementation of climate-change disclosures.

Thank you for the opportunity to share IBC's view.

INTERNATIONAL BANCSHARES CORPORATION



Judith I. Wawroski
Executive Vice President and Chief Accounting Officer

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32 Proposal, *supra* note 1, at 373.

33 Jean Eaglesham & Paul Kiernan, *Fights Brews Over Cost of SEC Climate-Change Rules*, WALL ST. J. (May 17, 2022, 5:30 AM), https://www.wsj.com/articles/fight-brews-over-cost-of-sec-climate-change-rules-11652779802.