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Microsoft

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Via email

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

Re: Securities and Exchange Commission Release No. 33-11042, The Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Secretary Countryman,

Microsoft appreciates the opportunity to comment on the Securities and Exchange Commission's (the "Commission's") proposed rule, The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release No. 33-11042 (the "Proposed Rule").

We believe our company's long-term value and viability depend on an environmentally sustainable future and have communicated on these topics with investors and other audiences for many years. Microsoft has disclosed information on our carbon emissions and actions related to energy and climate for nearly two decades through the Carbon Disclosure Project (now CDP) and disclosed a wide range of environmental data through our annual Corporate Social Responsibility reporting. In January 2020 we announced commitments to be carbon negative by 2030, and to remove from the environment all the carbon the company emitted since our founding by 2050. Since then, we've announced a series of further commitments to be zero waste and water positive by 2030. We recognize transparency and accountability are fundamental to reaching these goals and in January 2021 we issued our first Environmental Sustainability Report detailing our progress and challenges advancing our environmental sustainability goals. Our 2020 report included independent verification of a portion of the emissions and water data provided and our 2021 report, released in March 2022, expanded the attestation to a portion of our waste and ecosystem data.

To summarize our views as described in more detail below:

- We generally support the proposed regime for reporting greenhouse gas ("GHG") emissions. We agree this information is relevant to investors in assessing companies' business performance and risk. We advocate for greater flexibility in the timing of reporting full-year emissions, as well as certain measures to facilitate Scope 3 emissions reporting.

- To facilitate compliance and provide the marketplace with decision-useful information that is material to investors, we suggest the Commission reduce the required granularity of certain proposed disclosures.
- We believe the proposed financial statement metrics should be based on well-established standards of materiality and not on a single bright-line threshold.
- We support high-level disclosure relating to companies' governance frameworks for climate strategy and risk management. We do not believe a specific mandated disclosure of board-level climate expertise represents optimal corporate governance.
- We request that the compliance dates for Scope 1-3 emissions disclosures, independent assurance, and financial statement expenditure and impact disclosures be delayed for one year beyond the current proposed implementation dates.

A. GHG EMISSIONS METRICS DISCLOSURE

The proposed Regulation S-K Item 1504 would require issuers to disclose in Form 10-K their GHG emissions for the most recent fiscal year and for the historical fiscal years included in the registrant's consolidated financial statements in the applicable filing. We agree universal, consistent, and comparable GHG emissions disclosures are an important piece of the mosaic of information investors need in order to assess the performance, risks, and opportunities of public companies. Shareholders, customers, employees, regulators, and other stakeholders are all increasingly focused on companies' actions and impacts in environmental, social, and governance ("ESG") spheres. Like many companies, we have been engaged for years in a robust dialogue with our investors on a variety of ESG topics. Climate-related issues are becoming more important to our shareholders as they make investment and voting decisions. This includes the impact of our products, services, and operations on the environment, changes in worldwide markets driven by climate change, risks and opportunities those changes present, and concrete actions we are taking in response.

Reporting of Scopes 1-3 emissions. We support the regular reporting of Scopes 1, 2, and 3 emissions by Large Accelerated, Accelerated, and Non-Accelerated Filers, as well as the exemption on reporting Scope 3 emissions for Smaller Reporting Companies. We believe this emissions disclosure regime strikes the correct balance to provide investors with relevant information to inform investment decisions while limiting burdens on smaller enterprises for the resource-intensive process of compiling and reporting Scope 3 emissions.

Microsoft has an extensive history of GHG emissions reporting. While our reported data has grown and evolved over time, we have reported Scopes 1 and 2 data reaching back to 2004 and certain Scope 3 data from as early as 2008. Particularly with respect to Scope 3 emissions, we have experienced the challenges of collecting and reporting accurate supply chain data, inconsistent application of carbon accounting guidelines across companies and sectors, and ambiguity about what constitutes best practice in measurement and reporting. As a result, we support the accommodations proposed for Scope 3 data, including an implementation period of one year after Scope 1 and 2 data, the liability safe harbor for Scope 3 data that is reported in good faith or with a reasonable basis, and the exemption for smaller reporting companies from Scope 3 reporting. We also support the Commission's statement that Securities Act Rule 409 and Exchange Act Rule 12b-21, which provide accommodations for information that is unknown and not reasonably available, would be available for the proposed Scope 3 emissions disclosures.

We believe transparent disclosure of Scope 1, 2, and 3 emissions is important. We recognize, however, that the standards for carbon reporting are not as mature as financial reporting standards. There should be an expectation of refinement of methodologies as they evolve without such changes being considered errors. As a result, while the accommodations above are helpful, we believe further guidance could enable more consistent compliance and reduce compliance burdens of Scope 3 emissions reporting. For example, it is not clear what would constitute Scope 3 data reported on "reasonable basis" and in "good faith" for purposes of the proposed safe harbor. We suggest that the Commission offer, as a non-exclusive, non-mandatory option, that limited assurance by a qualified provider on Scope 3 data would qualify a reporting company for the "reasonable basis" safe harbor. Similarly, limited assurance could be used as an optional, non-exclusive basis to objectively verify a company's determination of what Scope 3 information is not "reasonably available" for purposes of Securities Act Rule 409 and Exchange Act Rule 12b-21. As procedures for collecting Scope 3 information continue to fully mature, a process we believe will take years, companies will benefit from additional certainty in the application of these standards.

<u>Reporting of fourth quarter emissions</u>. We appreciate that the Commission recognizes the difficulty of compiling emissions data rapidly enough to report fourth quarter data in the Form 10-K. The myriad dependencies, many on third parties, inherent in compiling emissions data makes it unlikely companies will be able to compile this data with the same efficiency as a company's general ledger and other internal financial systems. Instead of mandating estimated fourth quarter emissions data in the Form 10-K, with duty to update for material changes, we recommend that the Commission allow greater flexibility in timing of disclosures. This could include (1) providing in the Form 10-K the trailing 12 months emissions data ending with the issuer's second or third fiscal quarter, or (2) providing emissions data for the full fiscal year in a later Form 10-Q or separate filing. In contrast to information on financial performance, the nature and uses of emissions data is such that a three- or six-month delay in its reporting does not diminish its utility.

<u>A whole-government approach to leverage climate data</u>. As we noted in our June 2021 comments on the request of the Commission for input on climate change disclosures ("June 2021 Letter"), we believe the Commission's ability to influence the development of a well-defined, uniform, and universal disclosure framework serves broader goals of the executive branch. In his January 27, 2021 *Executive Order on Tackling the Climate Crisis at Home and Abroad*, President Biden articulated the administration's goal of using a coordinated, multi-stakeholder approach in deploying the capacity of federal government agencies "to combat the climate crisis to implement a government-wide approach that reduces climate pollution in every sector of the economy" as well as other related objectives. Further, in his May 20, 2021 *Executive Order on Climate-Related Financial Risk,* the President called for, among other things, the advancement of "consistent, clear, intelligible, comparable, and accurate disclosure of climate-related financial risk." Such disclosure would further the executive order's goal of requiring federal suppliers to provide information on GHG emissions and climate-related financial risk and committing to reduction targets and allow the federal procurement process to account for "the social cost of greenhouse gas emissions...in procurement decisions." As a result, the same data taxonomy the Commission can leverage for the benefit of investors could be applied to federal contracting and enable the government to leverage its own balance sheet to support its stated policy goals.

The Commission has modeled its disclosure rules in part on the Task Force for Climate-related Disclosure ("TCFD") disclosure framework and has leveraged the Greenhouse Gas Protocol ("GHG Protocol") as the basis for defining, measuring, and reporting Scope 1, 2, and 3 GHG emissions. The widespread use of these standards by companies voluntarily reporting GHG emissions and climate risks makes this a reasonable approach. At the same time, we note that other federal procurement and regulatory functions call for disclosures of GHG emissions as well. The costs and burdens of compliance with the Commission's Proposed Rule depend in part on how consistent they are with other disclosure mandates and do not require disparate procedures and systems to generate similar but not identical data. We urge the Commission to proactively work with relevant agencies to reach the greatest possible consistency in disclosure standards and protocols.

B. CARBON OFFSETS, RENEWABLE ENERGY CERTIFICATES, AND CARBON PRICING

Carbon offsets. Microsoft supports disclosure requirements around the use of renewable energy certificates ("RECs") and carbon offsets, including carbon removal credits. Each of these is an important tool in achieving net zero or other emissions targets. Companies should provide transparency, however, in all the means they use to reduce net emissions. As described in our 2021 Sustainability Report, we are prioritizing carbon reduction first, and then focusing on carbon removal for hard-to-abate emissions, instead of relying on traditional emissions offsets. This strategy is based on our view that removal is an underdeveloped and critical tool to solve the world's climate challenge. Achieving net zero requires reducing emissions as deeply as possible, then balancing remaining carbon emissions via long-term carbon removal. Ensuring that companies describe which reduction and offset tools they are using is an important means to accountability and constitutes valuable information for investors.

Getting the Commission's climate disclosure rules right requires, at the same time, striking an appropriate balance of mandating material information for investors while moderating burdens on issuers. In that vein, we do not believe the need for transparency necessarily requires granular disclosure of "the source of the offsets or RECs, a description and location of the underlying projects, any registries or other authentication of the offsets or RECs, and the cost of the offsets or RECs" as provided in proposed Item 1506(d) if those items are not material to investors. As we stated in our June 2021 Letter, we believe there is a viable role for private ordering -- the ongoing development of appropriate disclosures through interactions and negotiations between issuers, shareholders, and other stakeholders -- in the realm of climate disclosure, as there is in many other areas. If granular information such as the location of underlying carbon offsets or removal projects is material to investors in a particular enterprise, for example, they can so indicate directly to the issuer and influence disclosure of that information. We would not expect it to be material in all cases.

Carbon pricing. Microsoft first instituted an internal carbon fee in 2012, as a way to accelerate decarbonization internally and generate funding for carbon reduction and removal efforts. Our initial carbon fee focused on Scope 1, Scope 2, and business air travel. The proceeds from the fee provided funding for our carbon-neutral commitment at the time. In 2020 we began charging our internal business groups for all Scope 3 emissions. We track all our emissions across scopes: direct operations, electricity, procurement, supply chain, and product energy use, plus categories such as business travel and employee commuting. We aggregate that information, and each year charge our business groups a certain amount in carbon fees.

We support the proposed rules on disclosure of the extent, amount, and uses of internal carbon pricing programs within companies. We consider this a powerful tool, especially in large, diversified enterprises, to achieve focus and accountability for business leaders throughout a company's operations. We recognize that different companies calculate their carbon prices differently and for different purposes. We are supportive of transparent disclosure of methods used, including whether the carbon pricing is merely tracked on a ledger or actually charged to business units and used to support sustainable activities.

C. FINANCIAL STATEMENT METRICS

Disclosure threshold. Microsoft supports disclosure of significant events or activities that materially affect a company's financial statements. Such a requirement is consistent with the requirements in S-K 303(a)(3) for Management's Discussion and Analysis ("MD&A"). However, we believe the proposed financial statement metrics go significantly beyond those requirements and may not achieve the Commission's stated objective of increasing the consistency and comparability of disclosures. We acknowledge that the Commission requires disaggregation of certain financial statement line items in Article 5 of Regulation S-X. However, a one percent threshold on each individual financial statement line item adds additional complexity and would not appear to be decision-useful to investors if not material. This requirement could result in companies disclosing the impact of a climate event or transition cost that is smaller than another event or cost just because it's a larger percentage of a smaller line item. For example, an event having an impact of $100,000 would be required to be disclosed in a line item of $10 million, while $1 million would not require disclosure in a $150 million line item. As noted above it is important to strike an appropriate balance of mandating information for investors while moderating burdens on issuers. We believe that to maintain this balance, companies should be required to disclose only individual climate-related items that are material drivers of particular line items, consistent with MD&A practice. Additionally, we recommend the Commission consider including these requirements in Item 303 of Regulation S-K instead of Regulation S-X, with disclosure included as part of MD&A. We believe that disclosure of this information in MD&A is consistent with the principles of MD&A and will provide investors with decision-useful information about material climate-related matters.

Transition activities. The Proposed Rule would require companies to disclose "the impact of any identified transition risks and any efforts to reduce GHG emissions or otherwise mitigate exposure to transition risks." The definition of transaction activities appears broad and could be interpreted differently by different companies. For example, if a company purchases a more energy efficient piece of equipment, it is unclear whether the entire cost of the equipment should be included as a transition activity or just the incremental cost of purchasing that particular piece of equipment versus a less environmentally friendly model. As a company, we are constantly improving our products and services and climate-related initiatives are embedded in what we do. As such, the proposed disclosures around transition activities will be challenging to implement and may not be consistently applied. We recommend that the Commission consider narrowing the scope and providing additional clarification in determining material transition activities that require disclosure. Absent additional clarification, we recommend that the Commission acknowledge that diversity is likely and acceptable as long as companies appropriately describe their methodology for estimating these costs in a narrative discussion.

Timing of disclosure requirements. As noted above, Microsoft has disclosed information on our carbon emissions and actions related to energy and climate for nearly two decades. However, the proposed financial statement metrics are not consistent with how we currently monitor expenses. Although we do track certain investments in sustainability efforts through our internal carbon fee described above, that amount represents only a portion of the costs related to transition activities as defined broadly in the Proposed Rule. We expect that it will take substantial time to identify the appropriate costs to include in the scope of transition activities discussed above and to update our systems and controls to meet these requirements. We respectfully request that the Commission consider requiring these new proposed disclosures on a prospective basis and defer the required adoption of these requirements for at least one additional year.

D. AUDITING AND ATTESTATION REQUIREMENTS

As noted previously, we have received limited assurance over a portion of the data included in our Sustainability Report for the last two years, including Scope 1, 2, and 3 GHG emissions. Our initial 2020 report included independent verification of a portion of the emissions and water data provided and our 2021 report, released in March 2022, expanded the attestation to a portion of our waste and ecosystem data. Our environmental sustainability reporting has evolved over time and it has taken considerable time and resources to reach this state of maturity. We anticipate additional efforts will be required to meet the Commission's proposed requirements, including related to the accelerated timing discussed above and differences between the proposed scope and the GHG Protocol operational control approach to organizational boundaries. We recognize that we are farther along in this process than many other companies and recommend that the Commission consider deferring the attestation requirements in the proposed rules for at least one additional year.

E. GOVERNANCE DISCLOSURES

Proposed Item 1501 would require issuers to provide detailed disclosure regarding climate-related governance in their Form 10-K. As an initial matter, we suggest that this disclosure be subject to General Instruction G.3 of Form 10-K so that issuers have the option to provide this governance-related disclosure in their proxy statements.

Microsoft agrees that enhanced governance disclosure requirements, if grounded in materiality, would provide meaningful and actionable information to shareholders. We also believe that disclosure requirements influence issuer conduct, both positively and negatively. We are concerned that the prescriptive nature of the rule proposal may result in issuers building processes to address the rule, rather than to address the risk. For instance, a company seeking to generate a favorable impression from investors may decide to discuss climate-related risks with its board more frequently than would be appropriate given its circumstances, which could distract the board from matters more material to its operations. Conversely, a company may decide not to establish management positions or committees simply to avoid the associated disclosure obligations. For these reasons, we recommend the SEC revise proposed Item 1501 to encourage issuers to tailor processes and disclosure to their circumstances, with a focus on materiality.

Further, we note proposed Item 1501(a)(1)(ii) requires disclosure regarding board members' climate-related expertise. While the proposed disclosure creates no explicit obligation to have a "climate expert" on a company's board, it does create implicit pressure to do so. The rule as proposed invites investors and other stakeholders to question boards with no or minimal climate expertise among their members as to whether they are equipped to oversee climate-related risk. For the reasons stated in our comment letter regarding the SEC's recent cybersecurity proposal (www.sec.gov/comments/s7-09-22/s70922-20128328-291058.pdf), we believe this trend toward disclosure of specific expertise may lead to boards being made up of specialists who will lack an overall picture of the business landscape.

F. EXTENSION OF TIME FOR REPORTING AND ASSURANCE REQUIREMENTS

We recognize the gravity of climate change and the importance of timely disclosure to help investors assess its impact on companies. We also appreciate that the Commission has considered the time and resources that will be necessary to build the systems, processes, and expertise for companies to fulfill their reporting obligations under the rule. However, based on our long experience with GHG emissions reporting, including our 2020 and 2021 Sustainability Reports encompassing Scopes 1, 2, and 3 emissions, we respectfully suggest the Commission has underestimated the amount of time, even with diligent efforts among issuers, supply chain companies, and service providers, it will take to reach a maturity level for the accuracy required in SEC reports. We believe this is particularly true for small and medium-sized enterprises that may lack the resources we have been able to devote.

Similarly, as described in Section C above, compliance with Regulation S-X financial reporting requirements will require a comprehensive reimagining of how to identify and account for certain climate-related expenses. This will involve extensive efforts among each individual reporting company, accounting firms, accounting standards setters, and financial systems providers.

For these reasons, we respectfully request that the implementation dates for each of the following requirements under the Proposed Rule be extended one year from the proposed implementation dates:

- Scopes 1 and 2 GHG emissions reporting by all companies
- Scope 3 reporting by Accelerated Filers and Large Accelerated Filers
- Limited assurance on Scopes 1 and 2 GHG emissions reporting
- Reasonable assurance on Scopes 1 and 2 GHG emission reporting
- Regulation S-X financial impact and expenditure reporting

Microsoft appreciates the Commission's thoughtful and deliberate process on this critical topic and the opportunity to provide our input as we work to address climate change and help our customers and partners around the world reduce their carbon, water, waste, and land footprints. We further welcome the opportunity to discuss our comments and recommendations with the Commission or the Commission staff, and we look forward to opportunities to remain actively engaged in this topic with government and civil society organizations. Thank you for your consideration.

Sincerely,

Keith R. Dolliver
Vice President and Deputy General Counsel
Microsoft Corporation