



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

Date: June 15, 2022

**RE: The Enhancement and Standardization of Climate-Related Disclosures for Investors,  
File No. S7-10-22**

Dear Ms. Countryman:

SAP SE (SAP or we) appreciates the opportunity to comment on the proposed rules issued by the U.S. Securities and Exchange Commission (the SEC or the Commission), “The Enhancement and Standardization of Climate-Related Disclosures for Investors” (Proposal), Release Nos. 33-11042; 34-94478.<sup>1</sup> SAP is proud to be a leader in Environmental, Social and Governance initiatives and is committed to continuing to provide voluntary climate-related disclosures. We support the need for accuracy and transparency of data on climate-related issues as a key element of effective national and international climate action. Therefore, it is for this reason that we urge the Commission to implement in any final rule the following recommendations regarding a few key aspects of the Proposal which we believe are particularly problematic for foreign private issuers (FPIs).

**I. Introduction**

SAP SE is a European Company and FPI incorporated in the Federal Republic of Germany with American Depositary Shares traded on the New York Stock Exchange (NYSE) and ordinary shares listed on the Frankfurt Stock Exchange. We file with the Commission annual reports on Form 20-F with financial statements prepared in accordance with International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB).

We understand that the Proposal would require climate-related disclosures for both domestic registrants and FPIs.<sup>2</sup> Specifically, “the proposed rules would amend Part I of Form 20-F to require a foreign private issuer to provide the climate-related disclosures pursuant to the proposed rules either when registering a class of securities under the Exchange Act or when filing

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<sup>1</sup> The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21, 334 (Apr. 11, 2022).

<sup>2</sup> Proposal, p. 43.

its Exchange Act annual report.”<sup>3</sup> This will affect a substantial number of FPIs. The Commission notes that approximately 740 FPIs filed Forms 20-F in 2020.<sup>4</sup> We are writing to offer our perspective as an FPI and urge the Commission to consider adopting our recommendations on the following key components in any final rule.

We believe the Commission’s release of the Proposal reflects a global effort to standardize climate-risk disclosure rules. In 2022 alone, a range of governmental and non-governmental entities have published draft climate and sustainability-risk disclosure frameworks. For example, the International Sustainability Standards Board (ISSB) recently released prototypes of sustainability and climate-related reporting standards—including industry-based disclosure standards—and the Task Force on Nature-related Financial Disclosures (TNFD) released a beta framework. Last year, the European Commission released a proposed Corporate Sustainability Reporting Directive (CSRD), and, as part of the directive, the European Financial Reporting Advisory Group (EFRAG) released exposure drafts of the European Sustainability Reporting Standards (ESRS) earlier this year. Other disclosure frameworks have been announced and will likely be released in the very near future. For instance, the ISSB intends to publish additional topic-specific ESG standards, including standards on water, biodiversity, and social issues.

The Proposal, the CSRD/ESRS, and the ISSB’s Exposure Draft on Climate-Related Disclosures all build off the Taskforce on Climate-Related Financial Disclosures (TCFD) framework. The Proposal, the CSRD/ESRS, and the ISSB’s climate-related disclosure framework broadly cover similar material. While the Proposal has been praised for its efforts to harmonize with other frameworks, complete harmonization across jurisdictions will not ultimately be possible. Therefore, we urge the Commission to allow FPIs to comply with the requirements of any final rule by reporting under alternative disclosure regimes, particularly under CSRD/ESRS or ISSB, both of which Germany and/or the European Union (EU) may adopt as requirements. Because the Commission already allows FPIs to comply with various disclosure requirements by reporting according to their home country rules, the Commission should similarly allow FPIs to comply with any final rule on climate-related disclosures by reporting according to the climate-related disclosure requirements of their home countries, which will be CSRD/ESRS and/or ISSB in the case of our home country, Germany. In addition, consistent with the Commission’s treatment of FPIs that prepare financial statements in compliance with the IFRS as issued by the IASB, it should also allow FPIs to comply with any final rule by disclosing according to the ISSB’s climate-related disclosure standards, once finalized.

## **II. FPIs Should Be Able to Comply With the SEC’s Requirements by Complying with Home Country Rules**

We urge the Commission to allow FPIs to comply with the requirements of any final rule by complying with their home country rules. As the Commission has acknowledged through its previous rule-making, consistent and comparable reporting is possible even if registrants are able to use differing reporting standards. Specifically, we urge the Commission to allow FPIs to

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<sup>3</sup> Proposal, p. 275, n. 690.

<sup>4</sup> Proposal, p. 295.

comply with the requirements of any final rule by reporting under the CSRD/ESRS or ISSB climate-related disclosure standards, once finalized.

**a. Consistency and comparability for investors is possible even when registrants differ slightly in their reporting standards**

The Commission already acknowledges that consistency and comparability can be attained when registrants use differing accounting standards in their financial statements. For instance, since 2008, the Commission has not required FPIs to reconcile their financial statements to U.S. GAAP when the financial statements are prepared in compliance with IFRS as issued by the IASB.<sup>5</sup> In the adopting release to the 2008 rules, the Commission noted that the purpose of the rules was to reduce the disparity in accounting and disclosure practices between the U.S. and other countries, to encourage the use of IFRS outside of the U.S., and to overall “foster a single set of globally accepted accounting standards.”<sup>6</sup>

The Commission should continue to adopt rules consistent with these objectives. Similar to the stated purpose of the 2008 rules, in the current Proposal release, the Commission expresses a goal of promoting consistency in the preparation of financial statements once again. The Commission states that the “proposed basis of calculation requirements would also specify that a registrant would be required to apply the same set of accounting principles that it is required to apply in preparation of the rest of its consolidated financial statements included in the filing, whenever applicable.”<sup>7</sup>

With respect to FPIs, in particular, the Proposal notes those FPIs which “file consolidated financial statements under home country GAAP and reconcile to U.S. GAAP, would be required to use U.S. GAAP (including the provisions of the proposed rules) as the basis for calculating and disclosing the proposed climate-related financial statement metrics,” consistent with the Commission’s 2008 rules.<sup>8</sup> FPIs that “file consolidated financial statements under IFRS as issued by the IASB, would apply IFRS and the proposed rules as the basis for calculating and disclosing the proposed climate-related financial statement metrics.”<sup>9</sup> Specifically, the Proposal would require that FPIs, as part of the financial reporting requirements, include certain climate-related financial metrics, expenditures, as well as information on how climate-related risks, uncertainties, and impacts affect the estimates and assumptions used to produce the consolidated financial statements. Under the Proposal, FPIs reporting under IFRS would need to include these additional disclosures, along with other climate-related disclosures already required under IFRS.

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<sup>5</sup> Acceptance from Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards without Reconciliation to U.S. GAAP, 73 Fed. Reg. 3 (Jan. 4, 2008).

<sup>6</sup> Adopting Release, Acceptance from Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards without Reconciliation to U.S. GAAP, Release Nos. 33-8879; 34-57026, p. 6–7.

<sup>7</sup> Proposal, p. 112.

<sup>8</sup> *Id.* at p. 112, n. 319.

<sup>9</sup> *Id.*

**b. The Commission allows FPIs to use differing disclosure standards in other contexts**

For some disclosure requirements, the Commission has permitted FPIs to comply with home jurisdiction rules that the SEC recognizes as substantially similar to the SEC rules.<sup>10</sup> For example, when the SEC adopted rules requiring disclosure of payments made by resource extraction companies to host governments in December 2020, it issued an order recognizing the EU Directives, the UK's Reports on Payments to Governments Regulations 2014, Norway's Regulations on Country-by-Country Reporting, and Canada's ESTMA as alternative reporting regimes that would satisfy the disclosure requirements of the rule. This permitted issuers subject to EU, UK, Norwegian, or Canadian rules to comply with similar rules already implemented in their home jurisdictions, with the Commission specifically stating in its adopting release that these other disclosure regimes satisfied the "transparency objectives" of the rule.<sup>11</sup> The Commission should similarly consider alternative reporting regimes for any final rule on climate-related disclosures, assuming the transparency objectives can be met.

In addition, FPIs are generally subject to their home jurisdiction's disclosure rules with respect to corporate governance matters. For example, director compensation and related disclosure requirements are governed by the laws of an FPI's home jurisdiction. Thus, an FPI must only disclose director compensation in Form 20-F if it is required to do so in its home jurisdiction or if it otherwise makes this information publicly available in its home jurisdiction.

We further note that the Proposal already exempts certain issuers from complying with the rule altogether. The Commission has not proposed to amend Form 40-F, the Exchange Act form used by a Canadian issuer eligible to report under the Multijurisdictional Disclosure System (MJDS) to register securities or to file its annual report under the Exchange Act, to include the proposed climate-related disclosure requirements. MJDS is a reciprocal initiative adopted by the SEC and the Canadian Securities Administrators designed to facilitate cross-border public offerings of securities by allowing issuers to meet their disclosure obligations in both Canada and the U.S. by complying with the issuer's home country disclosure standards and permitting the review of that disclosure solely by the securities regulator in the issuer's home country. We believe the Commission should follow the same model for all FPIs in any final rule.

**c. FPIs that ultimately comply with home country rules, such as the CSRD/ESRS, or use ISSB should not be required to have separate SEC disclosure requirements to meet different standards**

We urge the Commission to allow FPIs to satisfy the disclosure requirements of any final rule by reporting under home country disclosure requirements, such as the CSRD/ESRS, once adopted, or the ISSB's climate-related disclosure standards, once finalized.

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<sup>10</sup> Proposal, Request for Comment 183.

<sup>11</sup> Adopting Release, Disclosure of Payments by Resource Extraction Issuers, Release No. 34-90679, p. 147.

*Corporate Sustainability Reporting Directive (CSRD) and the European Sustainability Reporting Standards (ESRS)*

In April 2022, EFRAG, a private organization that has been tasked with drafting sustainability standards for the CSRD, published exposure drafts titled the European Sustainability Reporting Standards (ESRS). The ESRS is the first set of standards that will be required under the EU's CSRD, which is expected to be adopted by the end of this year. Once adopted, the ESRS, and the CSRD more generally, will impose binding legal requirements on large and public companies in the EU.

We urge the Commission to make clear in any final rule that an FPI can satisfy its obligations under any such rule if such FPI has provided the disclosures required under its home country rules, which in this case will be CSRD/ESRS. An FPI that reports under ESRS will be required to disclose climate-related information that is substantially similar to, and in many cases exceeding, what is required by the Proposal, meeting the Commission's transparency objective with regards to this Proposal. For example, the draft ESRS includes an assurance requirement for greenhouse gas (GHG) emissions disclosure, and the draft ESRS is also based on the TCFD framework. Moreover, in certain respects, the draft ESRS requires more extensive disclosures than the Proposal. For instance, unlike the Proposal, the draft ESRS requires companies to disclose Scope 3 emissions regardless of materiality or if the company has set a Scope 3 emissions reduction target, which goes beyond the requirements of the Proposal. The draft ESRS also requires subject companies to disclose a climate-related scenario analysis, not only those companies that already conduct such scenario analyses.

*International Sustainability Standards Board (ISSB)*

As the Commission already notes in the Proposal Release, the ISSB, which was formed by IFRS Foundation, endeavors to issue a global climate-related reporting framework by year-end.<sup>12</sup>

We appreciate the Commission's continued involvement in and support of the ISSB's efforts as a member of the IFRS Foundation Monitoring Board. As the Commission is aware, the ISSB's mission is to create a single set of globally accepted sustainability disclosure standards, which would include climate-related disclosure standards. The ISSB's aim is similar to that of the IASB with respect to accounting, which is currently required in over 140 jurisdictions and permitted in many others, including the U.S. Similar to the treatment of FPIs who report according to the IASB, any final rule should allow FPIs to comply with their disclosure requirements by reporting under the ISSB's final climate-related disclosure standard. Just as the Commission does not require FPIs to reconcile their financial statements to U.S. GAAP when the financial statements are prepared in compliance with the IFRS as issued by the IASB, it should also allow FPIs to comply with any final rule regarding climate-related disclosures by disclosing according to the ISSB's climate-related disclosure standards, once finalized.

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<sup>12</sup> IFRS, "Path to global baseline: ISSB outlines actions required to deliver global baseline of sustainability disclosures" (May 18, 2022), available at <https://www.ifrs.org/news-and-events/news/2022/05/issb-outlines-actions-required-to-deliver-global-baseline-of-sustainability-disclosures/>.

Both under the umbrella of the IFRS, the ISSB and IASB are working in close cooperation with each other to ensure compatibility between the two standards. According to the ISSB, the ISSB and IASB “standards will complement each other to provide investors and other capital market participants with comprehensive information to meet their needs.”<sup>13</sup> As the SEC already permits FPIs to report financial statements in conformity with the widely accepted IASB standards, it should treat the forthcoming ISSB standards with the same consideration.

Moreover, as the ISSB has also based its climate-related disclosure draft standards on the TCFD framework—in fact the TCFD is a member of the working group responsible for developing the standards—the Commission should feel confident that the disclosure requirements of the ISSB climate-related standards will be substantially similar to any final rule the SEC ultimately adopts.

The SEC should also feel confident in the efficacy of the ISSB’s forthcoming standards given the level of support for the ISSB’s efforts amongst the international community already. The G20 leaders have already welcomed the ISSB’s plan to develop a global baseline for sustainability disclosure.<sup>14</sup> Additionally, in a May 2022 meeting, the G7 welcomed the inauguration of the of the ISSB and its progress on the global baseline of sustainability and climate reporting standards. The G7 also encouraged countries to “aim to ensure interoperability of national and regional standards and the global baseline” to “minimize fragmentation of reporting requirements, reduce reporting burdens, and enable the availability of consistent sustainability information for users.”<sup>15</sup> Finally, the UK has stated that it expects the ISSB’s standards will be the “backbone” of its corporate reporting requirements.<sup>16</sup>

Finally, given the urgent demand for reporting on climate-related matters, the ISSB has prioritized finalizing the climate-related disclosure standards. The ISSB expects to issue a final climate-related standard by the end of this year.

### **III. The SEC Should Provide Transition Relief for Recently Acquired Companies**

Under the Proposal, FPIs that register securities on Form F-4 in connection with an acquired business would be required to disclose climate-related information regarding the target company.<sup>17</sup> We believe that the Commission should allow FPIs additional time to incorporate climate-related disclosures of acquired businesses, including with respect to any financial statement disclosure requirements of any final rule. We note that the Commission has already provided transition relief in other contexts. The Adopting Release for the Conflict Minerals rule, for example, allows “an issuer to delay the initial reporting period on the products manufactured by the acquired company until the first calendar year beginning no sooner than eight months after the effective date of the acquisition.”<sup>18</sup> Given the complexities associated with reporting

<sup>13</sup> IFRS, *ISSB: Frequently Asked Questions*, available at: <https://www.ifrs.org/groups/international-sustainability-standards-board/issb-frequently-asked-questions/>.

<sup>14</sup> *Id.*

<sup>15</sup> U.S. Treas. Dept, *G7 Finance Ministers and Central Bank Governors Meeting Communiqué* (May 20, 2022), available at: <https://home.treasury.gov/news/press-releases/jy0797>.

<sup>16</sup> U.K. Financial Conduct Authority, *Enhancing climate-related disclosures by standard listed companies* (Dec. 2021), Section 1.18, available at: <https://www.fca.org.uk/publication/policy/ps21-23.pdf>.

<sup>17</sup> Proposal, p. 275.


<sup>18</sup> Adopting Release, Conflict Minerals, Release No. 34-67716, p. 106. *See also id.* at p. 107 (“We note that a shorter period, such as requiring an issuer to report with respect to the products manufactured by or for the acquired entity

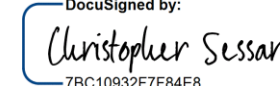
acquisitions by FPIs to the SEC compounded with the complexities of climate risk reporting, especially if FPIs are required to conduct reconciliations to GAAP, having only eight months after the effective acquisition date to do such reporting is insufficient.<sup>19</sup> FPIs should have until the commencement of the first reporting fiscal year that begins no sooner than 24 months after the effective date of the acquisition. When we acquire a company, we generally need time to integrate and align the acquired company’s systems, controls, and procedures with ours, either because the acquired company has a different filer status and compliance schedule than us or otherwise has less rigorous or different systems. Absent a temporary exemption, the proposed rule would complicate our mergers and affect the timing of when we can close mergers and remain in compliance with the rule in our next annual report.

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Thank you for the opportunity to provide these recommendations.

Sincerely,

DocuSigned by:  
  
FC3F52DFF53A4EE...  
Luka Mucic  
Chief Financial Officer  
SAP SE

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during the first fiscal year beginning after the fiscal year in which the acquisition is consummated, may leave an issuer that acquires a company late in the year with an insufficient amount of time to establish systems to gather and report on the conflict minerals information.”).

<sup>19</sup> There are significant differences between U.S. GAAP and IFRS related to accounting for business combinations. IFRS 3 defines the acquisition date as the date the acquirer obtains control of the acquire. But GAAP and IFRS establish different standards for “control.” Under GAAP, “the usual condition for a controlling financial interest is ownership of a majority voting interest, and, therefore, as a general rule, ownership by one reporting entity, directly or indirectly, of more than 50 percent of the outstanding voting shares of another entity is a condition pointing toward consolidation.”<sup>19</sup> Under IFRS 3, however, “[a]n investor controls an investee when the investor is exposed, or has rights, to variable returns from its involvement with the investee and has the ability to affect those returns through its power over the investee.”<sup>19</sup> The numerical threshold in GAAP—50 percent—means that companies abiding by GAAP will more quickly identify when an integrated set of transferred assets qualifies as a business combination rather than an asset acquisition. Companies abiding by IFRS (and therefore not using a numerical threshold) may be delayed in recognizing the appropriate acquisition date.