IACI Idaho Association of Commerce & Industry

Employers Advocating Economic Opportunity in Idaho®

June 16, 2022

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

Attn: File Number S7-10-22

The Idaho Association of Commerce and Industry (IACI) is the leading voice for business in Idaho representing hundreds of members of all sizes engaged in diverse commercial and industrial enterprises throughout the state. Collectively, IACI members employ roughly half of the employed population in Idaho. Many of our member companies will be directly impacted by these proposed rules.

I. Introduction

The Securities and Exchange Commission (SEC) proposed on April 11, 2022 a new regulation entitled "The Enhancement and Standardization of Climate-Related Disclosures for Investors" (Proposed Rule). As described in the Federal Register:[1]

> "The proposed rules would require information about a registrant's climate-related risks that are reasonably likely to have a material impact on its business, results of operations or financial conditions. The required information would also include disclosure of a registrant's greenhouse gas emissions, ….In addition certain climate-related financial metrics would be required…."

Overall, IACI believes that the Proposed Rule is overly prescriptive and is not connected to the standard of materiality, which is a core principle of financial reporting. The Proposed Rule fails to recognize that many climate-related risks cannot be quantified with a degree of accuracy that is comparable to the audited financial data that appear in annual reports. Thus IACI believes that the overly burdensome and prescriptive nature of the Proposed Rule undermines one of its main goals: "to improve the consistency, comparability, and reliability of climate-related disclosures."[2]

[1] Federal Register. 2022. Vol 87, p.21,334.
[2] Ibid. at 21,335

The following comments cover major aspects of the Proposed Rule and illustrate how the Proposed Rule adds considerable regulatory burden, requires reporting that is speculative and non-material, and works against the principle of providing *material* information needed by investors.

II. Requested Climate-Related Risk Information is Very Subjective

The Proposed Rule requires disclosure of climate-related risks; the breadth of such risks is expansive (i.e., suppliers, weather, and special climate or related events). Potential physical risks that a registrant would need to consider include flooding, extreme water stress, increased temperatures, wildfires, and sea level rise.[3] Companies would then be required to disclose actions that are taken to mitigate these potential climate risks.[4] When these risks are "reasonably likely" to cause a material impact, the Proposed Rule would require that they be disclosed at the ZIP code level.[5] However, the reality is that each of these potential risks are difficult, if not impossible, to quantify for any specific location.

The ambiguity and vague nature of the Proposed Rule leaves registrants with little clarity on what it should disclose, especially because the disclosure requirement is not tethered to an appropriate materiality standard. The SEC provides little guidance to registrants in the Proposed Rule on how to decide whether disclosure is appropriate.

To illustrate, if an agricultural company registrant develops a new seed that allows a crop to tolerate higher or lower temperatures and use less water, is this an action to mitigate climate risk that must be disclosed? The development of such a seed may have been done to expand potential growing areas for this crop and would likely be confidential business information as an important business strategy element. The disclosure of such a development could be detrimental to future business. Another example is water rights: what if the registrant purchases additional water rights for potential use for future business purposes? Is this an action to mitigate climate risk that must be disclosed?

The sheer number of activities and possible scenarios that a registrant might engage in for a host of reasons entirely unrelated to climate change, but that could have some sort of nexus to the effects of climate change are voluminous and incalculable. Given the liability risk associated with failing to make a disclosure later deemed to have been necessary, the regulations, if finalized, need to clarify exactly what is required or at a minimum add a materiality qualifier.

[3] Ibid. at 21,351.
[4] See proposed 17 C.F.R. § 229.1503.
[5] See proposed 17 C.F.R. § 229.1502(a).

III. Greenhouse Gas Emission Reporting is Complex and Should Use Existing Reporting Requirements

The Proposed Rule would require certain registrants to provide an attestation report (from an independent attestation service provider) of their Scope 1 and Scope 2 emissions disclosures.[6] This proposed requirement is extremely burdensome and fails to utilize existing federal Scope 1 emission reporting requirements.

The Commission's Proposed Rule is ignorant of the complexities of environmental measurements and existing reporting requirements. There are practical considerations that need to be considered to ensure that Scope 1 and Scope 2 emissions can be adequately evaluated by an independent verifier. First, the methods used to quantify Scope 1 and Scope 2 greenhouse gas emissions will vary significantly across business sectors and industries, and even within organizations with diverse and complex manufacturing processes. While financial accounting practices may be relatively consistent across business sectors, greenhouse gas quantification methods are not. The supporting data and the calculation methods used for greenhouse gas emission quantifications can be numerous and varied depending on the emission processes being evaluated.

For example, greenhouse gas quantifications at complex manufacturing facility can involve data collection and emissions calculations that may consider hundreds of supporting documents and data points. These often include internal monthly production reports, flow meter records, third-party invoices, third-party lab reports, and emission test reports. At some facilities, physical data that could be used to directly calculate the portion of the facility's emissions may not be available due to valid limitations, and the facility must rely instead on other calculation methodologies to estimate emissions. Also, all this information will need to go through a facilities' quality control and quality assurance procedures to determine the validity of the information and if any limitations to use of the data is warranted.

Also, reporting requirements in the Proposed Rule need to reflect the time needed to compile this information and complete the needed quality assurance and quality assurance procedures.

Many companies that would be subject to the Proposed Rule already report their Scope 1 greenhouse gas emissions to the U.S. Environmental Protection Agency (EPA), including electric generating companies whose Scope 1 emissions are non-electric generating companies' Scope 2 emissions.[7] These EPA disclosure requirements should suffice for any Scope 1 and Scope 2 requirements adopted by the SEC, especially considering that the Commission states that "GHG emissions data compiled for the EPA's own GHG emissions reporting program would be consistent with the GHG

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[6] Federal Register. 2022. Vol 87, p. 21,346.

[7] 40 C.F.R. part 98 (Mandatory Greenhouse Gas Reporting); *see also* EPA, Scope 1 and Scope 2 Inventory Guidance, http://www.epa.gov/climateleadership/scope-1-and-scope-2-inventory-guidance.

Protocol's standards."[8] As a result, the SEC concludes that "a registrant may use that data in *partial* fulfillment of its GHG emissions disclosure obligations pursuant to the" Proposed Climate Disclosure Rule.[9] However, it is not clear why these data would not *completely* fulfill a registrant's obligations under the Proposed Rule with regard to their Scope 1 and Scope 2 emissions. There is no need for the SEC to deviate from the EPA's standards. The EPA has been requiring reporting on this information for years and is the lead environmental agency in the U.S. government. Rather than require additional information, registrants that report to EPA should simply be allowed to furnish the information to the SEC.

IV. Climate-Related Financial Metrics

The Proposed Rule requires registrants to disclose, on each consolidated financial statement line item, the impacts (both positive and negative) of severe weather events, natural conditions, transition activities, and other items, provided the events collectively have an impact in excess of one percent of the total line item for the relevant fiscal year.[10] Each line item in financial statements and percent changes that are significant for that line item are different. A "one-size-fits-all" change threshold like that in the Proposed Rule is not appropriate.

A major flaw underlying the Proposed Rule is the unrealistic assumptions about availability of data and modeling capabilities; as written the Proposed Rule will result in risk quantifications that are purely speculative, especially the required financial statement impact metrics and Scope 3 greenhouse gas ("GHG") emissions reporting. While financial accounting practices may be relatively consistent across business sectors, quantification methods of potential risks from climate related events and greenhouse gas emissions are not.[11] As a result, the risks that are estimated cannot be consistently measured across companies, industries, regions, or sectors. Investors may not recognize the disparate nature of these disclosures and the fact that they cannot be fairly compared.

Examples given in the Proposed Rule include determining how revenue is impacted by a severe weather event and quantifying any negative impact of the event (such as supply chain difficulties leading to increased costs) and the positive impact of the event (such as increased demand for a product because of the weather event). It is unclear, however, at what point a weather event is considered to have occurred because of climate change or whether it is a normal weather event. This makes disclosure in this area particularly problematic.

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[8] Federal Register. 2022. Vol 87, p. 21,374.
[9] Ibid.(emphasis added).
[10] Ibid. at 21,365-68.
[11] For example, there is a well-defined methodology for the process for stating asset retirement obligations [see section 410-20 of the Accounting Standard's Codification ("ASC 410-20")]. There is no analogous methodology for determining the financial aspects due to climate risks.

Assigning quantitative, line-by-line financial impacts to speculative climate-related risks, requires a degree of guesswork that would be inappropriate for a disclosure designed to inform investors of material information.

V. Other Impacts of the Proposed Rule

Other aspects of the Proposed Rule that are problematic include the following:

Scope 3 Emission Reporting: Scope 3 emissions encompass a company's indirect emissions throughout its entire value chain, excluding emissions from the generation of electricity that the company generates or purchases (which are captured in Scope 2 emissions). Scope 3 emissions include all of the emissions generated by a company's suppliers and all of the emissions generated by consumers of the company's products. The Proposed Rule would require registrants to disclose Scope 3 emissions under two circumstances: (1) those emissions are "material";[12] or (2) the registrant has set a greenhouse gas emissions target or goal that includes Scope 3 emissions.[13]

A fundamental assumption of this proposed requirement is that such Scope 3 emissions may be material "for many registrants" given their "relative magnitude" and importance to helping investors "assess the registrants' exposure to climate-related risks."[14] The SEC then recommends that issuers that determine that Scope 3 emissions are not material should provide disclosure justifying their decision to enable investors "to understand the basis for that determination."[15]

Similar to other aspects of the Proposed Rule, the Scope 3 emission reporting requirements would require considerable guesswork and speculation. Thus, the certainty and value of such information would in all likelihood *not be material*.

The critical aspect of Scope 3 reporting is that the emissions of interest are outside of a registrant's control. While a registrant may have some insights into the activities of the entities upstream and downstream in its value chain, the interconnected nature of the global marketplace makes getting valid information about these activities difficult. A large manufacturer may have thousands of suppliers and create products that are used globally. The magnitude of the number of potential inputs for such a Scope 3 emission calculation is daunting.

The requirement to disclose Scope 3 emissions would also impose an obligation for emission disclosure on non-public companies if the non-public company is in the value chain of a registrant that has to report Scope 3 emissions. This would place an undue

[12] Proposed 17 C.F.R. § 229.1504(c)(1). The Proposed Climate Disclosure Rule defines material as "a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities or how to vote." Federal Register. 2022. Vol 87, p. at 21,351.
[13] Proposed 17 C.F.R. § 229.1504(c)(1).
[14] Federal Register. 2022. Vol 87, p. 21,378.
[15] Ibid. at 21,379.

reporting burden on companies not otherwise subject to the Proposed Rule or the SEC's jurisdiction.

Role of Board Management and Climate Change: The Proposed Rule requires registrants to identify the members of the board who are responsible for the oversight of climate-related risks. Registrants must also disclose whether any board member has expertise in climate-related risk and if so, describe the nature of that expertise.[16] The proposed disclosure of climate expertise on the board is unduly burdensome and unnecessary. The SEC does not currently require this type of disclosure for other areas of expertise (with the exception of an Audit Committee Financial Expert).[17] It is unclear why disclosing climate expertise is more important to investors than disclosing expertise in other critical areas and seemingly undermines a company's ability to have a well-functioning board with members with diverse skill sets who can effectively oversee the full range of issues that companies face.

Proposed Rule Can Impede Free Markets: The disclosure of non-material climate-related risks "could proliferate investment bias and practices by investors and financial institutions to exclude certain energy-intensive companies and sectors from investment portfolios or restrict access to or significantly increase the cost of capital."[18] These types of biases and practices have a negative impact on certain types of companies, such as those using fossil fuels or certain industrial sectors (such as mining) by unnecessarily devaluing these operations and creating an inequitable financial environment for certain companies, regardless of the companies' results, strategy, or financial performance.[19]

VI. Recommendations

The Proposed Rule is overly burdensome and has a very prescriptive nature. This approach undermines one of its main goals: "to improve the consistency, comparability, and reliability of climate-related disclosures."[20] At its' core, many of the Proposed Rule's flaws stem in large part from the SEC's one-size-fits-all climate disclosure requirements that are not connected to well-understood traditional interpretations of materiality. Too much of the information required by the Proposed Rule will require speculative assumptions and guesswork, which will result in information of questionable value, be non-material and not useful for investors.

Materiality is foundational to the SEC's principles-based approach to disclosure; allowing materiality determinations on a case-by-case basis for climate related matters

[16] Federal Register. 2022. Vol 87, p. 21,359-60.
[17] 17 C.F.R. § 228.401(e).
[18] Ibid. at 2.
[19] Ibid.
[20] Federal Register. 2022. Vol 87, p. 21,335

rather than prescribing bright-line rules would be the most effective method of providing information to investors. IACI recommends the following to accomplish this objective:

- Eliminate any requirements to disclose non-material matters.
- Remove the financial statement metrics that require speculation about the impact of climate-related risks, weather events, and transition activities on each of the line items in consolidated financial statements.
- Eliminate the Scope 3 reporting.
- Utilize the existing EPA GHG reporting information as being sufficient for Scope 1 emissions.
- The filing of the greenhouse gas emissions data and material information related to climate and climate risks could be done in a separate report designed especially for this purpose.

IACI believes that the most effective disclosure of climate related information occurs when individual companies collaborate with their investors, customers, local communities, and other priority stakeholders to identify and voluntarily disclose the relevant, financially material metrics, whether quantitative metrics or qualitative information, that are most useful to the decision-making process of those investors.

Sincerely,

Alex LaBeau
President

cc: Alan Prouty, Chair
IACI Environment Committee