June 16, 2022

VIA ELECTRONIC SUBMISSION

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

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

Ladies and Gentlemen:

On behalf of its members, the Risk Management Association's Climate Risk Consortia ("RMA Consortia")[1] thank the Securities and Exchange Commission ("SEC") for the opportunity to comment on its proposed framework for the enhancement and standardization of climate-related disclosures ("Proposal").[2]

The RMA Consortia seek to assist banks in integrating climate risk management throughout their operations, preparing the industry to help economies transition to a low-carbon future. The RMA Consortia, representing 40 leading U.S. and Canadian banking organizations, also aim to advance climate risk management practices in the banking industry by facilitating the development of industry-wide taxonomies and standards.

The RMA Consortia appreciate the SEC's objective of promoting climate-related disclosures that are consistent, comparable and reliable. Most of its members have published climate-related information in reports that align with the recommendations of the Task Force on Climate-Related Financial Disclosures ("TCFD"). However, we believe several of the proposed disclosures should be recalibrated to better serve the SEC's objective. Our recommendations, which are organized by disclosure item, are intended to address the following four key thematic concerns.

- First, the methodologies, standards, data and internal capabilities necessary to produce the proposed quantitative disclosures are in development or are just beginning to be explored, calling into question the feasibility and practical benefits of the disclosures, at least in the near term. The final rule should recalibrate the Proposal, particularly the requirements for financial statement metrics, Scope 3 emissions and scenario analysis disclosures, based on current measurement capabilities. Additionally, the final rule should incorporate mechanisms, such as the traditional materiality standard under

[1] The RMA Consortia consist of two groups: the Climate Risk Consortium for large financial institutions and the Regional Bank Climate Risk Consortium.
[2] SEC, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21334 (Apr. 11, 2022).

securities law, to limit the risk of overloading investors with highly granular, potentially unreliable or immaterial data.[3]

- Second, the Proposal overestimates the usefulness to investors of detailed information regarding a registrant's idiosyncratic practices, processes, procedures, oversight mechanisms and strategies for climate-related risk management. To avoid overloading investors with immaterial information, mitigate what will be very high compliance costs and reduce the likelihood of requiring disclosure of commercially sensitive information, the final rule should clarify the high-level nature of the information required to be disclosed regarding scenario analysis, governance and risk management and incorporate a traditional materiality standard.

- Third, the enormous amount of work registrants would need to complete within the proposed compliance timelines to establish the systems, controls and procedures necessary to produce and disclose the proposed information in financial reports would expose registrants to unnecessary transition risk. The short phase-in periods contemplated by the Proposal would necessitate diverting technology, risk management and other resources from potentially more urgent risk issues, including potentially those relating to climate change. We recommend longer phase-in periods to mitigate transition risks and support registrants' safe and sound implementation of the quantitative disclosure requirements. Longer phase-in periods for financial statement and other quantitative disclosures also would offer additional time for climate-related data, methodologies and standards to develop.

- Finally, requiring disclosure of greenhouse gas ("GHG") emissions on registrants' annual reporting timelines may not be feasible, at least in the near term, and would undermine the SEC's objective of providing consistent, comparable and reliable information to investors. Therefore, the GHG emissions disclosures should be located in a new form that is submitted after the annual reports. In light of persistent methodological and data challenges, the final rule should provide for the new form to be furnished rather than filed. The final rule also should explicitly allow for Scope 3 emissions disclosures to lag other climate-related disclosures by at least a year.

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[3] Unless otherwise specified, recommendations for a "materiality standard" are to the traditional materiality standard that is referenced in the preamble to the Proposal. *See, e.g.*, 87 Fed. Reg. at 21351, n.209 (citing *Basic v. Levinson*, 485 U.S. 224, 231, 232, and 240 (1988) (holding that information is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision; and quoting *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1977) to further explain that an omitted fact is material if there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."). The SEC has used the traditional materiality standard to strike the correct balance between too much and too little information in disclosure rules. *See, e.g.*, Chair Mary Jo White, Speech: The Path Forward on Disclosure (Oct. 15, 2013), https://www.sec.gov/news/speech/spch101513mjw ("When disclosure gets to be 'too much' or strays from its core purpose, it could lead to what some have called 'information overload' – a phenomenon in which ever-increasing amounts of disclosure make it difficult for an investor wade through the volume of information she received to ferret out the information that is most relevant.").

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Below we outline key considerations and recommendations for revising the proposed disclosure requirements for (1) climate-related financial statement impacts; (2) Scope 3 GHG emissions; (3) Scope 1 and Scope 2 GHG emissions and attestations; (4) scenario analysis; and (5) governance and risk management.[4]

I. Climate-related Financial Statement Impacts

The RMA Consortia are concerned about the difficulty of producing, and question the benefits to investors of disclosing, the proposed quantitative financial statement metrics before the relevant methodologies and accounting standards are available. To address these challenges, the final rule should locate the financial statement-related disclosures in the MD&A section of registrants' annual reports or alongside other qualitative climate-related disclosures rather than in the audited financial statements and require primarily qualitative disclosures. If the final rule were to retain quantitative disclosures, it should modify the requirements, including by replacing line item disclosures with aggregate disclosures and the 1% thresholds with a qualitative materiality threshold. Moreover, the compliance date should be delayed until applicable accounting standards are developed and registrants have sufficient time to implement the internal control over financial reporting ("ICFR") necessary to comply with the Sarbanes-Oxley Act.

A. Considerations

1. Requiring disclosure of quantitative financial statement metrics before methodologies and accounting standards exist would be premature.

Very few companies attempt to calculate actual climate-related financial statement impacts today, even for internal purposes.[5] Climate-related financial statement analysis is, generally, an undeveloped and highly complex analytical field that is just beginning to be explored.[6] Unlike for GHG emissions—where third-party standards and guidance are more developed and available to aid companies in the measurement and reporting of GHG emissions—methodological approaches and standards for calculating and accounting for climate-related financial impacts do not exist.[7] The Generally Accepted Accounting Principles ("GAAP"), which the Proposal would require U.S. registrants to use in accounting for the proposed climate-related metrics, do not include climate accounting standards.[8]

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4 We anticipate the SEC to receive diverse feedback from interested parties. Depending on the SEC's revisions to the Proposal, the next iteration of the proposed climate disclosure rules could depart significantly from the current Proposal. In that case, we ask that the SEC consider requesting additional comments before finalizing the rules.

5 *See* TCFD, 2021 Status Report, at 62 (Oct. 2021), https://www.fsb.org/wp-content/uploads/P141021-1.pdf [hereinafter, "TCFD 2021 Status Report"] (finding that the vast majority of companies surveyed do not currently estimate financial impacts and even fewer disclose financial impacts).

6 *See, e.g.*, *id.* at 64–66.

7 *See id.*, at 65 n.57 (indicating that a "climate-related financial disclosure standard to help connect sustainability and accounting standards" is in prototype form only and that more work on "clarifying application of financial accounting standards to climate-related matters" is being done.).

8 Proposed 17 CFR 210.14-01(c)(2).

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TCFD publications note some of the significant challenges involved in trying to measure and account for climate-related issues in financial statements, including needing to isolate the specific monetary impact attributable to climate-related events from other drivers and determine financial accounting implications of climate-related risks.[9] Well-developed methodologies and accounting standards to aid companies and limit the need for subjective determinations[10] are all the more critical if registrants are to include quantitative metrics in audited financial statements.

2. Certain provisions in the Proposal would exacerbate the difficulty of producing the disclosures and further diminish their quality.[11]

Producing line-by-line financial statement disclosures. Requiring quantitative information on a line-by-line basis would necessitate the use of significant additional judgments and estimations to arrive at line item impacts.[12] A line item approach is not contemplated by the TCFD framework and, in an analogous context, the Federal Reserve Board's ("FRB") Comprehensive Capital Analysis and Review does not contemplate analysis of impacts of stress scenarios on specific line items banks submit given the imprecision and limited utility of line item disaggregation.

Although the RMA Consortia appreciate the SEC's efforts to alleviate compliance burdens by providing a 1% threshold, the threshold is so low that registrants would need to perform substantially the same work to determine whether a financial impact falls below the threshold (and thus does not need to be disclosed) as to disclose the less than 1% financial impact. Moreover, the threshold is too low, which would result in overloading investors with information that is immaterial.

Identifying financial effects of transition activities and risks. As the TCFD noted in its report, effective attribution of financial effects to climate-related events and activities is a significant challenge because there are often multiple drivers of a financial impact. Measuring the financial effects of transition activities and transition risks would be particularly difficult.[13] A registrant may undertake activities as much to mitigate transition risk as to address some other priority.[14] Moreover, whether certain transition activities (*e.g.*, new climate regulations) and transition risks have had any impact on their financial statements may be difficult to ascertain.[15] The subjectivity required to determine attribution of financial statement effects to transition activities and risks would contribute to the incomparability of disclosures across registrants.

Accounting for historical climate-related events and activities. The Proposal does not specify how far back in time a registrant must look in considering the impacts of climate-related events

9 *See, e.g.*, TCFD 2021 Status Report, *supra* note 5, at 65.
10 *Id.* ("preparers interviewed noted a subjective element in organizations' decisions of how to attribute the impact of climate-related risks and opportunities to financial accounts.").
11 This section is in part responsive to Request for Comment 53.
12 Proposed 17 CFR 210.14–02.
13 Proposed 17 CFR 210.14–02(d), (f), (i).
14 As raised in Request for Comment 60, a registrant may not be able to quantify and provide the proposed disclosure when the impact may be the result of a mixture of factors.
15 Under the Proposal, "transition activities" appears to include both activities undertaken by registrants in response to transition risks and external events, as well as the external transition-related events themselves. Proposed 17 CFR 210.14–02(d), (f).

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and activities on financial statements for the most recent fiscal year or historical periods included in a registrant's filing. In the absence of methodological and accounting standards or a provision in the Proposal that provides a "back-stop," registrants may take different approaches that yield incomparable disclosures. Moreover, the Proposal does not address whether the metrics would need to be restated or adjusted for historical periods if climate-related impacts from, *e.g.*, physical or transition events, are not identifiable and do not occur until after the metrics are first reported.

Obtaining audits in advance of accounting standards. As noted above, the Financial Accounting Standards Board ("FASB") has not yet developed climate accounting standards for GAAP, but the Proposal would require the financial statement metrics to be accounted for and audited in accordance with GAAP. It would be premature to mandate audits when the standards for such audits do not exist and their development are not within registrants' control. Registrants may not have the ability to comply with the rules.

Implementing internal controls sufficiently in advance of compliance date. The Proposal contemplates that a large accelerated filer would begin reporting the proposed metrics, along with the other proposed disclosures (other than Scope 3 emissions disclosures), for the fiscal year that begins after the final rule's effective date.[16] Data reflected in audited financial statements must be collected and processed under ICFR that accord with Sarbanes-Oxley. The technology build-out would be significant. Before building out the systems to collect the information and develop the controls, registrants would need to, among other things, identify the information that would need to be collected, design the systems controls and obtain budget for the information technology ("IT") project. The IT projects necessary to build out information collection and internal control capabilities may not be budgeted for 2023, depending on when an institution determines its budget for a year. The conformance period should provide registrants, particularly financial institutions, the time needed to conform with the rules without having to, for example, postpone or halt projects that may be critical to their safety and soundness.

Reporting metrics for historical periods predating the compliance date. Registrants also would need to report metrics for any historical period included in registrants' financial statements. For reasons similar to the initial timing challenges discussed above, reporting the metrics for historical periods that predate the compliance date also would be impracticable given that the ICFR were not in place for those periods. Although, as the SEC notes in the preamble to the Proposal, a registrant may be able to take advantage of the accommodation in 17 CFR 230.409 ("Rule 409") or 17 CFR 240.12b–21 ("Rule 12b-21") if the information is not reasonably available to the registrant without unreasonable effort or expense, relying on the accommodation would expose registrants to risk that the SEC or investors take a different view regarding the availability of certain information.[17]

[16] *See* 87 Fed. Reg. at 21346.
[17] *See* 87 Fed. Reg. at 21364.

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B. Recommendations

The RMA Consortia recommend the following revisions in the final rule to address the considerations discussed above.

1. **Qualitative Disclosures**. Given current methodological and accounting capabilities, the final rule should require registrants to disclose primarily qualitative information regarding climate-related financial statement impacts in the MD&A sections of registrants' annual reports or alongside other primarily qualitative climate-related disclosures pursuant to Regulation S-K. The MD&A would be a more appropriate location than the audited financial statements for discussing quantitative information alongside narrative explanations that describe the likely impacts and expenditures related to climate-related events and activities.[18] The disclosure also should be subject to the traditional materiality standard, which applies to other information contained in the MD&A, and thereby mitigate information overload.

2. **Recalibrated Quantitative Disclosures**. If the final rule were to require registrants to make quantitative disclosures, it should tailor the disclosure requirements based on current methodological and accounting capabilities. In particular, the final rule should require disclosure of aggregate financial impacts and expenditures to avoid the significant complexities involved in calculating financial statement metrics by line item. However, if the final rule were to require line item disclosures, the disclosures should be subject to a qualitative materiality threshold rather than the proposed 1% thresholds. A materiality threshold would better align with the SEC's recognition that the benefits of disclosure must be balanced with the associated reporting costs and the SEC's frequent use of a materiality standard to limit disclosure rules.[19] Quantitative disclosures, whether on an aggregated or line item basis, also should reflect the following modifications in the final rule.

    a. **Physical Events and Risks**. The final rule should only require registrants to disclose the financial impacts and expenditures related to severe weather events and other natural conditions and physical risks, excluding the more difficult transition activities and risks disclosures. Disclosing financial statement metrics for transition activities and risks presents challenges that would diminish the utility of these disclosures for investors, as they would be inconsistent and non-comparable.

    b. **Historical Climate-Related Events and Activities**. The final rule should clarify that a registrant is not required to reflect the financial impact of climate-related events and activities that occurred before the compliance date of the final rule.

    c. **Historical Fiscal Years Included in Filings**. The final rule should not require a registrant to disclose the financial statement metrics for historical periods

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[18] *See* SEC, Financial Reporting Manual, Topic 9 – Management's Discussion and Analysis of Financial Position and Results of Operations (MD&A), 9110.1, https://www.sec.gov/corpfin/cf-manual/topic-9.

[19] *See* note 3 for a discussion of the materiality standard to which we are referring.

predating the effective date of the final rule.[20] The ICFR necessary to produce the disclosures in the audited financial statements would not have been in place during earlier reporting periods.

d. **Phase-In Period**. The final rule should not require financial statement disclosures before climate-related accounting standards have been developed for GAAP through an appropriate standards setting process, for example by FASB. The compliance date also should provide all registrants additional time to establish the systems, controls and procedures necessary to collect and compute the relevant data in accordance with Sarbanes-Oxley. Thus, the final rule should not require the disclosures until the later of two years following the adoption of the final rule or the establishment of GAAP climate-related accounting standards.

e. **Staged Implementation**. The SEC also should consider implementing the disclosure requirements in stages that start with primarily qualitative disclosure requirements and phase in line item disclosure requirements. Staging would align with the recommendations of the Financial Stability Board, which advised requiring qualitative disclosures initially when full quantitative disclosures are not possible.[21]

f. **Advancements in Methodology**. Because methodologies for climate-related financial standards may evolve from year to year, to avoid discouraging innovation, the final rule should make clear that registrants would not need to restate or reclassify metrics disclosures for historical periods as a result of changes in methodologies.[22]

II. Scope 3 Emissions

The final rule should tailor the Scope 3 emissions disclosures in the final rule to better address limitations in measuring capabilities and mitigate the disclosure of immaterial information. In particular, the final rule should require disclosure of only material Scope 3 emissions, locate Scope 3 and other GHG emissions data in a separate form that is furnished rather than filed and explicitly permit Scope 3 emissions data to lag. The final rule also should implement the Scope 3 emissions disclosure requirements in stages and after a longer phase-in period.

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[20] This recommendation is responsive to Request for Comment 56.

[21] FSB, Supervisory and Regulatory Approaches to Climate-Related Risks: Interim Report, at 19 (Apr. 29, 2022), https://www.fsb.org/wp-content/uploads/P290422.pdf ("To the extent that more granular and specific climate-related information is required for supervisory and regulatory objectives, above and beyond public disclosures, authorities could begin with requiring financial institutions to report qualitative information supplemented with increasingly available quantitative information (including, where full information is not available, use of proxies and estimates).").

[22] Responsive to Request for Comment 127 (asking about disclosing material changes to the methodology or assumptions underlying GHG emissions disclosures). Although this Request for Comment is specific to GHG emissions disclosures, we believe the question is also applicable to financial statement metrics disclosures, which, like GHG emissions, rely on methodologies that may change.

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A. Considerations

1. In the near term, limited measurement capabilities may render the disclosures, as contemplated in the Proposal, unreliable.

As the SEC acknowledges in several places in the preamble to the Proposal, issues related to data quality and availability, as well as calculation methodology persist.[23] For financial institutions' Scope 3 emissions in the "investments by a registrant" category, the availability of borrower and investment data varies widely, with data from borrowers in higher-emitting sectors generally more available than from borrowers in lower-emitting sectors.[24] Moreover, the methodological approaches and data necessary to calculate Scope 3 emissions of several investment instruments (*e.g.*, mortgage-backed securities) are not yet developed by the relevant standard setters, such as the Partnership for Carbon Accounting & Reporting ("PCAF") Standard and GHG Protocol.[25]

The Proposal seeks to account for challenges with respect to calculating and disclosing GHG emissions by offering registrants the ability to use estimates and ranges where more precise disclosures are not possible.[26] The preamble notes the potential availability of the accommodation in Rule 409 or Rule 12b-21 for information that is unknown and not reasonably available.[27] Using estimates and ranges would not appropriately address the lack of methodology for calculating certain types of financed emissions. Although registrants may be able to take advantage of the accommodation, doing so would leave open the possibility that the SEC or investors take a different view as to the availability of the excluded information. Although appreciated by the RMA Consortia, the Proposal's inclusion of a one-year phase-in period for Scope 3 emissions likely would not be sufficient to overcome these limitations and facilitate more reliable disclosures.[28]

[23] 87 Fed. Reg. at 21381.

[24] *See* TCFD 2021 Status Report, *supra* note 5, at 32 (stating that industry groups seen to be less carbon intensive disclose less). Although the final rule may improve access to the Scope 1 and Scope 2 emissions data for financial institutions' reporting borrowers, financial institutions may have substantial business with non-reporters. The availability of emissions data for those reporters would not be directly impacted by an SEC climate disclosure mandate.

[25] *See, e.g.*, PCAF, Global GHG Accounting & Reporting Standard for the Financial Industry, at 44 (2020), https:// carbonaccountingfinancials.com/files/downloads/ PCAF-Global-GHG-Standard.pdf ("Green bonds, sovereign bonds, and derivative financial products (*e.g.*, futures, options, swaps) are not covered by this asset class. The same holds for short and long positions or special cases of underwriting such as IPO underwriting. Guidance on such financial products are still under development and will be published in later editions of the Standard.").

[26] Proposed 17 CFR 229.1504(e)(4).

[27] *See* 87 Fed. Reg. at 21391.

[28] Moreover, the proposed compliance timeframe may not afford financial institutions sufficient time to identify processes for acquiring necessary information from non-reporting customers in ways that limit potential burdens to customers, thereby contributing to transition risk with minimal benefit because the disclosures would be of limited quality.

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2. Total financed emissions likely would not provide investors with useful insight into a registrant's transition risk, even if such emissions could be measured with reasonable reliability.

The SEC notes in the preamble to the Proposal that one of the purposes of requiring Scope 3 emissions disclosures would be to provide investors with insight into a registrant's transition risks.[29] In the context of financed emissions disclosures, transition risk from financing activities would arise if portfolio credit quality or loan demand were to deteriorate due to the effects of climate-related regulations (*e.g.*, emissions-reduction regulation) on a registrant's borrowers and investments. Except with respect to borrowers in specific emissions-intensive industries, credit quality and loan demand for financing may not be sensitive to emissions-reduction regulation. Thus, Scope 3 emissions information related to borrowers in lower-emitting industries would not provide insight into a registrant's transition risk. Moreover, total Scope 3 emissions data would not provide insight into the extent of a registrant's exposure to borrowers that are sensitive to climate-related regulation.

3. Reporting actual Scope 3 emissions data for a registrant's most recent fiscal year would not be feasible and would be inconsistent with current emissions disclosure frameworks.

Financial institutions would be reliant, in part, on the Scope 1 and Scope 2 emissions disclosures of their clients in order to disclose Scope 3 emissions. Financial institutions would not have access to their public clients' Scope 1 and Scope 2 data until on or around the deadline for their own annual reports, which would make Scope 3 disclosures for the most recent fiscal year in annual reports impossible.[30] We appreciate the proposed accommodation to permit reasonable estimates of GHG emissions for the fourth fiscal quarter, but the timing challenges would not be limited to the fourth quarter, as the timing for reporting Scope 3 emissions for a fiscal year raises concerns regarding a financial institution's ability to disclose "actual, determined GHG emissions data for the first three fiscal quarters."[31] Moreover, requiring GHG emissions disclosures on the Form 10-K annual report timeline would result in companies frequently having to disclose material differences in subsequent filings. Multiple filings could cause investor confusion and render the initial disclosures less useful to investors.

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[29] *See* 87 Fed. Reg. at 21378 ("Scope 3 emissions information may be material in a number of situations to help investors gain a more complete picture of the transition risks to which a registrant may be exposed."). We note that, in their proposed climate-related financial risk management guidance, neither the OCC, FDIC nor Basel Committee on Banking Supervision discuss GHG emissions as providing risk-related insight. *See* OCC, Principles for Climate-Related Risk Management for Large Banks, (Dec. 16, 2021), https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-62.html [hereinafter, "OCC Principles"], Basel Committee on Banking Supervision, Principles for the Effective Management and Supervision of Climate-Related Financial Risks (Nov. 16, 2021), https://www.bis.org/bcbs/publ/d530.htm [hereinafter, "BCBS Principles"], Federal Deposit Insurance Corporation, Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions, 87 Fed. Reg. 19507 (Apr. 4, 2022) [hereinafter, "FDIC Principles"].

[30] The Proposal would require all GHG emissions disclosures to be located in registration statements and periodic reports, including Forms 10-K and 10-Q. Annual Reports are due within 60 and 75 days of fiscal year-end for large accelerated filers and accelerated filers, respectively. The SEC acknowledges the likely difficulty of completing GHG emissions calculations for a registrant's most recently completed fiscal year in time to meet the annual reporting deadline. *See, e.g.*, 87 Fed. Reg. at 21387.

[31] Proposed 17 CFR 229.1504(e)(4)(i). *See* 87 Fed. Reg. at 21387.

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Current voluntary Scope 3 emissions disclosures often lag by at least a year. Companies' TCFD reports typically contain Scope 3 disclosures that are based on data from one to two years prior to the reporting year. Explicitly permitting Scope 3 disclosures to lag by a year or more would be an efficient way to address the timing challenges of Scope 3 emissions disclosures.

B. Recommendations

The RMA Consortia recommend the following specific revisions in the final rule.

1. **Materiality**. The final rule should enable registrants that are subject to the Scope 3 disclosure requirements to disclose only material Scope 3 emissions. Registrants should have the flexibility to determine the appropriate information to disclose, rather than Scope 3 emissions overall and for each category that is "significant." For financed emissions, registrants may determine it most appropriate to disclose Scope 3 emissions related to higher-emitting sectors, where data is more available and the disclosures would be most insightful as to financial institutions' transition risk.

2. **Staged Implementation**. The implementation of the disclosure requirements should be staged based on the availability of data and methodologies. The final rule should make clear that registrants do not need to disclose Scope 3 emissions where methodologies do not exist (*e.g.*, where, for example, PCAF has not provided guidance). This would be more appropriate than requiring registrants to disclose figures in reliance on the provisions permitting estimates or to try to rely on the accommodation in Rule 409 or Rule 12b-21.

3. **Lagged Scope 3 Emissions Disclosures in a New Form**. The final rule should explicitly permit registrants to disclose Scope 3 emissions on a lag of one or more years. In addition, the final rule should locate disclosure of Scope 3 emissions (along with Scope 1 and Scope 2 emissions, as discussed below) on a separate, new form that is furnished rather than filed and submitted an appropriate period of time following submission of annual reports. The adjusted timelines would help to reduce the use of assumptions and estimates in order to meet reporting deadlines and the frequency of data updates in subsequent filings. Removing GHG emissions disclosures from periodic reports and associated disclosure controls and procedures ("DCP") would facilitate disclosure without the added time and complexity of working within those controls and procedures.

4. **Longer Phase-In Period**. The phase-in period should provide more time for financial institutions and all registrants to establish necessary systems, controls and processes for collecting data and quantifying Scope 3 emissions to mitigate transition risk and promote better disclosures.

5. **Historical Fiscal Year Disclosures**. The final rule should not require a registrant to disclose Scope 3 emissions for historical periods predating the effective date of the final rule, as this information would not be reasonably available for periods before the

compliance date and requiring registrants to rely on the accommodation in Rule 409 or Rule 12b-21 would expose registrants to unnecessary risk.[32]

III. Scope 1 and Scope 2 Emissions and Attestations

The final rule should provide a longer phase-in period for Scope 1 and Scope 2 emissions disclosures, which should be located in a new form submitted after annual reports.[33] We also suggest that the final rule implement the attestation requirements for Scope 1 and Scope 2 emissions data after a longer phase-in period, require only "limited assurance" and avoid specifying standards for attestations or providers.[34]

A. Considerations

1. Annual reporting deadlines would not provide registrants adequate time to calculate their Scope 1 and Scope 2 emissions for the prior fiscal year or to obtain the required attestation.

Scope 1 and Scope 2 emissions, although easier to measure than Scope 3 emissions, would not be immediately available and would be subject to some of the same timing challenges discussed above with respect to Scope 3. Registrants would still need to collect and process data, including from third parties, and obtain attestations, making meeting the deadline for annual reports very difficult.

The need to rely on estimates and assumptions for fourth quarter Scope 1 and Scope 2 emissions disclosures may preclude the possibility of obtaining the required attestation by the annual report deadline. Because Scope 1 and Scope 2 emissions will be based in part on third-party data, estimates and assumptions, it will likely not be complete enough for an attestation provider to provide the attestation in time for the annual report. Demand for attestation services would exceed supply, increasing the time it would take to obtain attestations. Even more important

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[32] This recommendation is responsive to Request for Comment 114. *See* the discussion of the reasonably available accommodation with respect to historical period disclosures for financial statement metrics in section I.A.2 on page 5.

[33] The Proposal would require all registrants to disclose their Scope 1 and Scope 2 emissions, disaggregated by each constituent GHG and in the aggregate. Proposed 17 CFR 229.1504(a)(1). These disclosures would be required of all registrants regardless of filing status in the first year of filings after the effective date of a final rule. *See* 87 Fed. Reg. at 21346. Unlike Scope 3 emissions disclosures, the Proposal does not include a safe harbor to protect registrants from liability for potential misstatements or omissions in their Scope 1 and Scope 2 emissions disclosures.

[34] The Proposal would require accelerated filers and large accelerated filers to provide an attestation report covering their Scope 1 and Scope 2 emissions disclosures. The attestation provider would need to be an expert in GHG emissions and independent of the registrant, but would not need to be an independent public accounting firm. Proposed 17 CFR 229.1505. A registrant would submit the attestation report starting in fiscal year 2 or 3 after first disclosing its Scope 1 and Scope 2 emissions, depending on the registrant's filing status. The Proposal would require the registrant to obtain "limited assurance" (*i.e.*, a negative assurance regarding whether any material misstatements or omissions have been identified after a review) for the first two attestation reports and then "reasonable assurance" (*i.e.*, the level of assurance that is equivalent to that of a full audit of financial statements). Proposed 17 CFR 229.1505(a)(1).

than the timing challenge, a registrant may not have enough actual Scope 1 and Scope 2 data for an attestation provider to provide an attestation for. Data with too many assumptions may preclude a registrant from meeting the verification requirements of the International Organization for Standardization ("ISO") 14064-3, a GHG emissions verification used for CDP (formerly known as the Carbon Disclosure Project) reporting and one of the verification regimes specifically mentioned in the Proposal.[35]

2. In the near term, the small supply of attestation providers would pose challenges for obtaining an attestation.

The Proposal would require an attestation provider to be "an expert in GHG emissions by virtue of having significant experience in measuring, analyzing, reporting, or attesting to GHG emissions."[36] As the Proposal acknowledges, "both the reporting and attestation landscapes are currently evolving and it would be premature to adopt one approach and potentially curtail future innovations in these two areas."[37] The scarcity of qualified attestation providers, coupled with the fact that any expert providing the attestation needs to be fully independent of the preparation of the disclosures (*i.e.*, a consulting expert cannot also be an attestation provider), may create significant challenges in even finding a qualified attestation provider, at least in the near term. As discussed in more detail in recommendation 3 below, the RMA Consortia would advise against adopting additional criteria or standards for attestations or providers.

3. Requiring reasonable assurance would impose burdens on registrants that currently engage attestation providers without obvious benefit.

Requiring reasonable assurance would impose immediate costs on registrants by requiring additional build-out of controls but provide little to no benefit for investors. Limited assurance is more typical of ESG disclosures. We also note that it is highly unusual for Regulation S-K to have an attestation requirement for quantitative information that is not in the financial statements. Typically, only industry-specific disclosures related to particular activities require expert opinions (*e.g.*, appraisals, future mine production). To the extent there are any benefits to investors from an attestation requirement in the form of "credibility enhancement, lower cost of equity capital, and lower analyst forecast errors and dispersion,"[38] these benefits could be achieved with limited assurance without the unnecessary costs associated with reasonable assurance.

B. Recommendations

The RMA Consortia recommend the following revisions in the final rule to address the considerations discussed above.

1. **Longer Phase-In Period**. The SEC should provide a longer phase-in period to enable registrants to build internal capabilities (*e.g.*, systems and processes) to produce accurate disclosures and obtain the attestation over those disclosures.

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35 *See* Request for Comment 154, 87 Fed. Reg. at 21403.
36 Proposed 17 CFR 229.1505(b)(1).
37 87 Fed. Reg. at 21395.
38 87 Fed. Reg. at 21394.

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2. **Separate Form for GHG Emissions Disclosures**. The final rule should locate Scope 1 and Scope 2 (along with Scope 3) emissions disclosures in a separate, new form that is furnished rather than filed and has a later deadline than that for annual reports. This would support better, more useful disclosures by providing registrants with additional time to acquire actual data. Affording registrants sufficient time to acquire more actual data also may mitigate any challenges associated with obtaining an attestation.

3. **Flexible Standards for Attestations and Providers**.[39] The final rule should not incorporate additional standards for the attestation providers or the attestations themselves to avoid unintentionally disqualifying appropriate attestation providers.[40] In particular, the final rule should not adopt the contemplated accreditation requirement or require an attestation provider to be a member in good standing of a particular body. Some of the firms currently providing voluntary attestations are non-accounting bodies, and we recommend that the final rule retain flexibility for registrants to continue using qualified attestation providers. The SEC should be careful not to further narrow the field of potential providers by specifying unnecessary or inappropriate standards for an attestation of Scope 1 and Scope 2 disclosures.[41] For example, the final rule should be written in a way that is inclusive of all of the standards, including those commonly used by non-accountants, identified in Request for Comment 154[42] and the standards accepted by CDP so as to avoid inadvertently excluding qualified providers.[43]

4. **Limited Assurance Only**. The SEC should eliminate the phase-in to reasonable assurance and require only a limited assurance.[44]

IV. Scenario Analysis

The final rule should incorporate a materiality standard for a registrant's disclosure of scenario analysis-related information and clarify expectations regarding the granularity of information a registrant would need to disclose to avoid potentially compelling disclosure of commercially sensitive and other proprietary information. The final rule also should retain flexibility for registrants to choose scenario models and provide a longer phase-in period.

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[39] Responsive to Request for Comment 156.
[40] Responsive to Request for Comment 144.
[41] This is responsive to Request for Comment 154.
[42] This includes standards of the Public Company Accounting Oversight Board (PCAOB), the American Institute of Certified Public Accountants (AICPA), the International Auditing and Assurance Standards Board (IAASB), ISO 14064–3 and the Account Ability's AA1000 Series of Standards.
[43] *See* CDP, Verification Standards, https://www.cdp.net/en/guidance/verification.
[44] If the SEC decides to remove the attestation requirement, we recommend expanding the safe harbor for Scope 3 emissions disclosures to include Scope 1 and Scope 2 emissions disclosures.

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A. Considerations

1. The nascent state of climate-related scenario analysis capabilities would undermine the usefulness to investors of financial impact disclosures.

The RMA Consortia appreciate the SEC's interest in providing investors with information that enables them to evaluate the resilience of a registrant's business strategy to climate-related risks.[45] However, climate-related scenario analysis is in its infancy and has limited use as a reliable analytical tool due to significant gaps in data and methodological immaturity. The SEC identifies these challenges in the preamble and economic analysis of the Proposal.[46] The U.S. and international bank regulatory bodies also have documented those challenges at length and noted the limited reliability and usefulness of climate-related scenario analyses today.[47]

Thus, disclosures of the quantitative results would not provide reliable, decision-useful information to investors and would therefore not further the objectives of the Proposal. Moreover, disclosure of the parameters, assumptions and analytical choices of the scenarios employed by the registrant, as required by the Proposal, would be unlikely to improve the reliability, consistency and comparability of projected financial impact disclosures.[48] Rather than enable investors to better understand the projected financial impacts, the disclosures of parameters, assumptions and analytical choices may cause confusion.

2. The type of scenario analysis conducted by financial institutions would not produce material information for investors.

Financial institutions generally do not use scenario analysis to assess business resilience to climate-related risks.[49] Rather, as the Federal Deposit Insurance Corporation ("FDIC") recently

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[45] *See* Proposed 17 CFR 229.1502(f); 87 Fed. Reg. at 21356.

[46] *See, e.g.*, 87 Fed. Reg. at 21449 ("[b]oth scenario analysis methodologies and climate science . . . continue to advance and develop, which may pose significant challenges for some registrants. Specifically, the required data may be unavailable or costly to obtain.").

[47] *See e.g.*, Financial Stability Oversight Council, Report on Climate-Related Financial Risk, at 95–96 (Oct. 2021), https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf [hereinafter, "FSOC Report"] (detailing the data and modeling challenges specific to scenario analysis); Financial Stability Board, The Availability of Data with Which to Monitor and Assess Climate-Related Risks to Financial Stability, at 31–35 (Jul. 7, 2021), https://www.fsb.org/2021/07/the-availability-of-data-with-which-to-monitor-and-assess-climate-related-risks-to-financial-stability/ (explaining the data shortcomings and modeling uncertainty specific to scenario analysis). Proposed climate-related risk management principles from the OCC, the FDIC and the Basel Committee on Banking Supervision all acknowledge the relatively nascent state of climate-related data and methodologies needed to conduct effective scenario analysis at this time. *See* OCC Principles, *supra* note 29; FDIC Principles, supra note 29, "Data, Risk Measurement, and Reporting" principle (acknowledging that "[d]ata, risk measurement, modeling methodologies, and reporting continue to evolve at a rapid pace"); BCBS Principles, *supra* note 29, "Scenario Analysis" principle (suggesting that banks "diagnos[e] data and methodological limitations in climate risk management").

[48] *See* Proposed 17 CFR 229.1502(f).

[49] The Proposal implicitly assumes that information on scenario analysis results, parameters, assumptions and analytical choices would provide investors with insight into the extent to which a registrant has adapted its business strategy to address climate-related risks. *See, e.g.*, 87 Fed. Reg. at 21357 ("Disclosure of the parameters, assumptions, and analytical choices involved in the described scenarios would help investors better understand the various considered scenarios and help them evaluate whether the registrant has a plan to manage the climate-related risks posed by each scenario."). The location of the disclosure item, in Item 1502

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stated, scenario analysis is "an emerging and important approach for identifying, measuring, and managing climate-related risks."[50] Financial institutions are beginning to explore using scenario analysis to support the development and assessment of an institution's climate-related risk measurement, management capacity and data.[51] The financial impact results of a financial institution's scenario analysis would not provide obvious insight into the resilience of a financial institution registrant's business resilience to climate-related risks. Detailed disclosure regarding scenario analysis, therefore, would not necessarily be material or decision-useful for investors.

For example, many banks run scenario analysis using extreme, stressed scenarios that are not probable to occur in order to help set risk tolerances, rather than to test business resilience to climate change. Disclosing these scenarios and exercises—even at a high level—could cause confusion to investors. Banks also may run scenario analysis using an unmitigated view, where the scenario does not include any climate adaptation or transition activities of borrowers or any mitigation strategies that banks may use. The actual risk in an unmitigated scenario would be difficult for an investor to understand, even if accompanied by contextual information, and could confuse investors that attempt to compare scenario analysis disclosures from registrants using different types of scenarios and strategies. In other cases, financial institutions develop scenarios that focus on the most prominent, likely exposures to climate risk based on their unique portfolios. As a result, the proposed scenario analysis disclosures would vary across financial institutions and from year to year, diminishing their comparability and consistency.

3. Detailed disclosures regarding scenario analysis may divulge commercially sensitive or proprietary information.

Without clarity regarding the extent of detail required, the information a registrant would be required to disclose regarding its scenarios, results, assumptions and parameters may reveal commercially sensitive or proprietary information. A financial institution's scenario analysis exercises are commercially sensitive. The inputs draw on a bank's strategies and methods (*e.g.*, credit strategy, risk scoring methodology, risk appetite) for managing risk, which is the core business of banks. Moreover, banks do not currently publicly disclose this level of detail around other types of risk management tools used in the management of other types of risk. Detailed disclosure of scenarios designed to assess the impact of physical risks may also pose information security concerns, as such information may provide too much information on the location or vulnerabilities of critical data infrastructure.

(Strategy, Business Model, and Outlook) rather than Item 1503 (Risk Management) suggests that the SEC anticipates disclosure of scenario analysis information in a registrant's discussion of the likely impacts of climate-related risks on its business.

[50] FDIC Principles, *supra* note 29, at 19509.

[51] *See* FSOC Report, *supra* note 47, at 66 ("scenario exercises have been used by regulated firms and regulators to develop and assess risk measurement, management capacity and informational needs").

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4. Requiring disclosure of scenario analysis ahead of forthcoming regulatory guidance would be premature.

Federal banking regulators are in the process of developing guidance on climate scenario analysis.[52] Requiring disclosure of detailed information regarding scenario analysis ahead of bank regulatory guidance may result in banks disclosing scenario analysis information that could change in the near future to conform to bank regulatory guidance, further diminishing year-to-year comparability, or deter banks from beginning or continuing to explore climate scenario analysis until the issuance of bank regulatory guidance. Financial institutions may also adopt practices and build out systems in order to make the disclosures required by the Proposal even though such practices may need to change significantly in response to bank regulatory guidance. Conformance with bank regulatory guidance may also yield more consistent disclosures across financial institution registrants. We urge the SEC to coordinate with the bank regulators in defining the appropriate scope and implementation of scenario analysis disclosure requirements.[53]

B. Recommendations[54]

The RMA Consortia recommend the following revisions in the final rule to address the considerations discussed above.

1. **Materiality Standard**. We recommend that the final rule explicitly adopt a traditional materiality standard for scenario analysis disclosures to avoid overloading investors with information that would not be decision-useful.[55]

2. **Generalized, Qualitative Disclosure**. The final rule should require disclosure of only generalized, qualitative information regarding the results of a registrant's scenario analysis and the relevant parameters, assumptions and analytical choices to better account for the fact that not all types of scenario analysis yield decision-useful information and avoid compelling disclosure of confidential supervisory information or proprietary information. In addition, the final rule should clarify that neither proprietary information nor commercially sensitive information are required to be disclosed.

3. **Flexibility for Scenario Development**. The SEC should not require registrants to follow certain publicly available scenario models for scenario analysis, and instead permit banks to develop scenario models in accordance with what bank regulatory guidance deems appropriate.[56] We encourage the SEC to continue collaborating with the federal financial

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52 *See* Lael Brainard, Building Climate Scenario Analysis on the Foundations of Economic Research, Federal Reserve (Oct. 7, 2021), https://www.federalreserve.gov/newsevents/speech/brainard20211007a.htm (stating that the Federal Reserve is "developing scenario analysis to model the possible financial risks associated with climate change and assess the resilience of individual financial institutions and the financial system to these risks.").

53 *See* FSOC Report, *supra* note 47 (encouraging coordination more broadly: "Council members that are considering new requirements related to climate-related disclosures should seek to coordinate their efforts, consistent with their mandate and authorities, to promote consistency and comparability, where appropriate").

54 The recommendations are responsive to Request for Comment 30.

55 *See* "traditional materiality standard" definition, *supra* note 3.

56 Responsive in part to Request for Comment 30.

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regulators, especially the Federal Reserve Board ("FRB"), to set the appropriate parameters.

4. **Longer Phase-In Period**. The final rule should implement the scenario analysis disclosure requirements after a longer phase-in period and not until the data and methodologies enable registrants to conduct scenario analysis with reasonable reliability. We recommend that scenario analysis disclosure not be required prior to bank regulatory guidance on the use and disclosure of scenario analysis.

V. Governance and Risk Management[57]

The final rule should require material, higher-level and more generalized governance and risk management information than what is proposed to avoid compelling disclosure of proprietary information and to prevent information overload for investors.[58] We also recommend that the board expertise disclosure requirement be eliminated or that identified board members be provided a safe harbor.

A. Considerations

1. Whether a board includes a director with climate risk expertise is not indicative of the adequacy of a board's oversight of climate-related risks.

Whether a board includes directors with particular expertise in climate-related risks is not indicative of the adequacy or effectiveness of the board's oversight of climate-related risks. Because climate risk is a transverse risk that arises within other risk classes, general risk management experience on a board is relevant. Regional and large banks generally are expected by banking regulators to include at least one member with risk management experience. The FRB requires bank holding companies that have total consolidated assets of more than $50 billion to include at least one person with experience in identifying, assessing and managing risk exposure on their boards.[59]

Moreover, directors are not relied upon for their expertise within a risk area, nor does a director need to have expertise in order to provide effective oversight on a subject matter. Expertise and execution are the domains of management. Thus, banking regulators have acknowledged that the board can rely on reports and other information from management and third parties (*e.g.*, auditors, consultants) to guide their oversight and assessment of issues.[60] Banking regulators

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[57] This section is in part responsive to Requests for Comment 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45.

[58] Proposed 17 CFR 229.1501; Proposed 17 CFR 229.1503.

[59] *See, e.g.,* 12 CFR 252.22(a)(4)(i); 12 CFR 252.33(a)(4)(i) (requiring one board member with experience in identifying, assessing and managing risk exposure).

[60] *See, e.g.,* 12 CFR part 30, Appendix D.III.B ("In providing active oversight, the board of directors may rely on risk assessments and reports prepared by independent risk management and internal audit to support the board's ability to question, challenge, and when necessary, oppose recommendations and decisions made by management that could cause the covered bank's risk profile to exceed its risk appetite or jeopardize the safety and soundness of the covered bank."); Attachment to SR 21-3 / CA 21-1: Supervisory Guidance on Board of Directors' Effectiveness, Federal Reserve (Feb. 26, 2021),

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also expect the board to participate in ongoing training to enhance their understanding of risk topics and the effectiveness of their oversight.[61] The proposed principles for climate-related financial risk management by large banking organizations recently issued by the OCC and, separately, the FDIC do not advise banks to include climate risk experts on their boards but rather that "[t]he board should have adequate understanding and knowledge to assess the potential impact of climate-related risks on the bank…."[62] The banking regulators focus on board comprehension and continuing education rather than expertise.

Requiring registrants to disclose board-level climate risk expertise may create a de facto standard that, when selecting new board members, inappropriately preferences climate risk expertise (for which there is a limited pool of director candidates) over other critical variables, undermining the overall strength of the board.

2. Detailed disclosures of governance and risk management processes and practices would not provide material information regarding the adequacy of a registrant's response to climate-related risks.

The RMA Consortia appreciate the importance of robust oversight and governance of a company's material risks and thus investor interest in understanding board and management oversight and governance of climate-related risks. Whether the full board or a committee is informed of and discusses climate-related risks periodically and as needed, consistent with the board's oversight of other comparable risks, may be useful data points.

However, descriptions of the idiosyncratic processes by which the board discusses and is informed of climate-related risk and the frequency of discussions are unlikely to provide reliable insight into the adequacy or effectiveness of the registrant's response to climate-related risks. The level of detail required by the Proposal would meaningfully exceed the detail required in the governance disclosures of other SEC rules but would not provide investors with a commensurate amount of valuable and actionable information.

3. The proposed risk management disclosures may compel disclosure of proprietary information.

The Proposal would require disclosure of granular risk management and decision-making processes that may require divulgence of proprietary information. For example, detailed disclosures about risk decision-making could entail disclosure of bank credit and liquidity strategies, which are proprietary. As described with regard to scenario analysis in section IV.A.3 above, disclosures that are too detailed may inadvertently require confidential or proprietary business information to be disclosed. For financial institutions in particular, their core business

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https://www.federalreserve.gov/supervisionreg/srletters/SR2103a1.pdf (stating that third-party advisors could "supplement the board's knowledge, expertise, and experience and support the board in making sound, well-informed decisions").

[61] *See, e.g.*, Department of the Treasury, OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Integration of Regulations, 79 Fed. Reg. 54518, 54538 (2014).

[62] OCC Principles, *supra note* 29; FDIC Principles, *supra* note 29 (the FDIC language is substantively identical to the quoted language from the OCC).

strategy revolves around managing risk, so granular risk management disclosures would not be appropriate.

B. Recommendations

The RMA Consortia recommend the following revisions in the final rule to address the considerations discussed above.

1. **Materiality Standard**. The final rule should require disclosure of only material risk management and governance information to avoid overloading investors with immaterial information.

2. **Principles-Based Approach**. The final rule should require less detailed information regarding "how" the board and management oversee and govern climate-related risks and "how" the registrant performs risk management and makes climate-related risk decisions. Rather, the final rule should adopt a principles-based approach that enables registrants to provide the most relevant information, tailored to their businesses and industry, without disclosing proprietary information. Additionally, the final rule should not require disclosure of the exact frequency of climate-related discussions of or reports to the board.

3. **Board Expertise**. The final rule should not require registrants to disclose whether or not any directors have climate risk expertise.[63] If the final rule retains the board expertise disclosure requirement, it should be worded so as not to suggest that registrants may need to affirmatively disclose the absence of climate-specific expertise on their boards. In addition, it should provide a safe harbor for board members identified as climate experts, similar to the safe harbor the SEC included in its recent cybersecurity disclosure proposal for board members identified as cybersecurity experts.[64] Specifically, Proposed Item 407(j)(2)'s safe harbor clarifies that the item "would not impose on such person any duties, obligations, or liability that are greater than the duties, obligations, and liability imposed on such person as a member of the board of directors in the absence of such designation or identification."

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63 Responsive in part to Request for Comment 38.

64 SEC, Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, 87 Fed. Reg. 16590, 16602 (Mar. 23, 2022); Proposed 17 CFR 229.407(j)(2).

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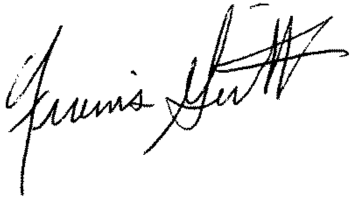
Thank you for your consideration of these comments. If there are any questions, please do not hesitate to contact me.

Sincerely,



Fran Garritt
Director
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