



June 16, 2022

Vanessa A. Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington D.C. 20549-1090

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

Transocean Ltd. (“Transocean”) appreciates the opportunity to submit this comment letter to the U.S. Securities and Exchange Commission (the “Commission”) in response to the Commission’s recently proposed rulemaking, “The Enhancement and Standardization of Climate-Related Disclosures for Investors” (the “Proposed Rule”). We are a leading international provider of offshore contract drilling services for oil and gas wells. As of June 1, 2022, we owned or had partial ownership interests in and operated 37 mobile offshore drilling units, consisting of 27 ultra-deepwater floaters and 10 harsh environment floaters. We provide, as our primary business, contract drilling services, related equipment and work crews to drill offshore oil and gas wells. We specialize in technically demanding regions of the global offshore drilling business with a particular focus on ultra-deepwater and harsh environment drilling services.

We are committed to protecting our people and the environment. Sustainability has been integrated into our core business model, with specific oversight by the Health, Safety, Environment, and Sustainability Committee of our Board of Directors. To minimize our environmental impact, we continue to focus on innovative technologies for improving safety and efficiency, as well as reducing our carbon footprint. In this regard, we recently began exploring complementary new business opportunities related to renewable and alternative energy.

We embrace a data-driven, risk-based approach to our business. We apply this thinking to our stewardship of the environment. With performance and energy awareness dashboards, real-time data, and other tools that enable insights for improving operational performance, we can efficiently target areas to improve risk mitigation and minimize environmental.

We also have substantial practical experience with developing internal reporting systems related to Greenhouse Gas (“GHG”) emissions and are well-positioned to evaluate and articulate impacts of the Proposed Rule. As a result of our responsible sustainability practices, we comply with at least one of the currently existing emissions reporting frameworks referenced in the Proposed Rule and regularly communicate climate-related information to investors and other stakeholders, including through the publication of an annual sustainability report. We have already incorporated into our sustainability reporting certain frameworks that have been developed by the

Global Reporting Initiative (“GRI”) and Sustainability Accounting Standards Board (“SASB”). As these frameworks and others, such as the Taskforce on Climate Related Financial Disclosures (“TCFD”), continue to be developed, refined and enhanced, we expect to continue to report important metrics in line with those frameworks that we believe would be beneficial to our investors based upon our ongoing engagement with investors and other stakeholders.

Although we support the transparency and standardization objectives promoted by the Commission, we believe that a reporting framework consistent with the Proposed Rule would fail to accomplish the Commission’s goal of promoting consistent, comparable and reliable climate-related disclosure among registrants and would present substantial technical challenges and result in significantly higher costs and administrative burdens for public companies like Transocean.

We also have concerns that the Proposed Rule departs from the historical understandings and applications of “materiality” in both the securities law disclosure context and in the context of sustainability reporting. We believe that this departure will result in added burdens on us and other companies, as we would anticipate having to collect and prepare disclosures for information that we do not believe is material to making an investment in Transocean securities, nor material to how we internally assess and plan for risks and allocate capital. Moreover, we prepare our disclosures with Transocean investors in mind; while we understand that investors often utilize information that we disclose in evaluating investments in other companies, we view the fundamental purpose of the preparation of our financial statements and related disclosures as concerning investments in Transocean, rather than being designed to contribute to a systemic aggregation of information about climate-risks across myriad investor portfolios.

As the Commission noted in the Proposed Rule, the 2010 Interpretive Guidance on Climate Change Disclosure Requirements (the “2010 Guidance”)<sup>1</sup> emphasized that if climate-related factors have a material impact on a firm’s financial condition, disclosure may be required under current Item 101 (Description of Business), Item 103 (Legal Proceedings), Item 105 (Risk Factors), or Item 303 (MD&A) of Regulation S-K.<sup>2</sup> The 2010 Guidance stated that with regard to voluntary sustainability reporting, “registrants should be aware that some of the information they may be reporting pursuant to these mechanisms also may be required to be disclosed in filings made with the Commission pursuant to existing disclosure requirements.”<sup>3</sup> The 2010 Guidance was issued following the consideration of various “thoughtful suggestions” brought to the Commission’s attention regarding whether to enhance disclosure regarding climate change related matters.<sup>4</sup> We have found the 2010 Guidance a workable framework in our determinations as to whether climate-related information was appropriate to include in our filings with the Commission. The 2010 Guidance did not indicate that a new approach to materiality, or additional disclosure of climate-related information even if not material, were either warranted or within the scope of the Commission’s authority. We recommend the Commission maintains its alignment with this historically understood and universally accepted materiality standard.

---

<sup>1</sup> Commission Guidance Regarding Disclosure Related to Climate Change, Release Nos. 33-9106; 34-61469 (2010).

<sup>2</sup> See Proposed Rule at 296.

<sup>3</sup> See 2010 Guidance at 10.

<sup>4</sup> *Id.* at 11-12.

We appreciate the opportunity to comment on the Proposed Rule and respectfully request that the Commission consider the following views on a selection of issues raised by the Proposed Rule as further described below.

## **I. The Proposed GHG Emissions Reporting Regime Will Fail to Promote Consistent, Comparable and Reliable Disclosure**

The Proposed Rule's requirement that registrants disclose Scope 1 and Scope 2 emissions regardless of whether that information is material to an investment decision in the registrant is contrary to the Commission's stated goal of providing "decision-useful information" to investors.<sup>5</sup> By framing the purpose of the Proposed Rule primarily in terms of what information is useful to investor's decisions, the Commission has recognized the nexus between its disclosure goals for the Proposed Rule and the historically understood and universally accepted materiality standard. That materiality threshold is the correct rubric through which registrants should decide whether to disclose Scope 1 or Scope 2 emissions. Requiring disclosure of information that is not material to the registrant will be wasteful to registrants and not useful for investors.

We are already familiar with compiling and disclosing certain information – in our annual sustainability report – similar to the Scope 1 and Scope 2 information that would be required under the Proposed Rule. However, complying with the additional information requirements in the manner and timing contemplated by the Proposed Rule will result in substantial additional expense for us.

Our experience confirms that designing, implementing and refining internal reporting programs requires substantial time and resources. Companies often must identify, recruit and hire additional staff, or train existing staff, when subject to a new reporting regime. Companies frequently will need to obtain advice and assistance from external advisors and consultants when setting up such programs. Even for companies, such as Transocean, that have already been working toward voluntary compliance with the recommendations of the Task Force on Climate-Related Financial Disclosures ("TCFD"), the framework contemplated by the Proposed Rule would represent a new substantial claim on the availability of our personnel and resources, particularly in light of the compliance timelines in the Proposed Rule.

We also have concerns that introducing a new or hybrid emissions reporting regime, as the Proposed Rule does, will cause confusion in the market for companies like Transocean that also are required to report emissions and other environmental-related matters under different environmental and regulatory regimes. Information included in a company's filings with the Commission under the Proposed Rule – with the attendant potential liability therewith – will not be consistent with similar information that we are already required to report pursuant to regulations that have been adopted by environmental and similar agencies. For example, the disclosure under other reporting regimes based on ownership or control (*e.g.*, the U.S. Environmental Protection Agency ("EPA") GHG Reporting Program, the Greenhouse Gas Protocol ("GHG Protocol"), or the eventual standards adopted by the International Sustainability Standards Board's ("ISSB")) appears to conflict with disclosure required under the Proposed Rule, which would require a

---

<sup>5</sup> SEC Proposes Rules to Enhance and Standardize Climate-Related Disclosures for Investors, Press Release, March 21, 2022 <https://www.sec.gov/news/press-release/2022-46>.

registrant to report emissions based on boundaries delineated by reference to a registrant's consolidated financial statements.

If a framework for disclosure of Scope 1 and Scope 2 emissions is to be adopted by the Commission, we would strongly recommend that the Commission allow registrants to reference GHG emissions reported under the EPA GHG and Bureau of Ocean Energy Management, Outer Continental Shelf reporting programs to satisfy the Proposed Rule's GHG emissions reporting requirements. As an alternative, the Commission should wait to align any adopted framework with the anticipated issuance of the ISSB climate disclosure standard, which aims to ensure connectivity and compatibility between the IFRS Accounting Standards and is referenced by the Proposed Rule<sup>6</sup>. At a minimum, with respect to requirements that may impact disclosure pursuant to Regulation S-X, we would respectfully recommend that the Commission allow for a similar consultative process led by the Financial Accounting Standards Board to develop interpretive guidance that could inform a reporting framework that would be more likely to generate comparable information within existing U.S. generally accepted accounting principles. There have been substantial advances toward convergence in international standards and expectations for disclosure in this area in recent years, through the TCFD and others, and we believe these should be allowed to continue to develop. Delaying action in this area until international standards are more developed would help promote the Commission's stated goal of requiring disclosure that is comparable and consistent with those international standards. Conversely, imposing the reporting framework outlined by the Proposed Rule with insufficient interpretive guidance and convergence will be detrimental to this goal and ultimately detrimental to investors.

Additional concerns that we have with aspects of the proposed GHG emissions disclosure requirements also include:

- Scientifically accepted CO<sub>2</sub> equivalent factors (CO<sub>2</sub>e) are commonly used across existing GHG emissions reporting for many industries and offer a clear and scientifically accepted way to present all six referenced GHGs in the Proposed Rule. Any requirement to disaggregate these gases, regardless of materiality, would result in a significant increase in the cost and time needed to generate, validate and prepare applicable disclosures.
- The Proposed Rule lacks clear guidelines for the reporting and attestation of emissions. Current guidelines, including those in the GHG Protocol and GRI Standards, allow degrees of flexibility in interpretations. Companies are able to choose their own estimation methods, factors, intensity metrics, and scope boundaries. In contrast to selecting among approved accounting methods, such as electing to apply "LIFO" or "FIFO" when preparing financial statements, there is no settled view on the circumstances when one application may be more appropriate. The Commission has identified this flexibility as a concern in the Proposed Rule, but we do not believe that it has provided sufficient information to resolve these concerns.<sup>7</sup> Allowing companies to furnish this information in lieu of filing the information could be a more realistic path forward until more frameworks that can be consistently applied have matured and are made available. We also anticipate challenges with attestation of information

---

<sup>6</sup> See Proposed Rule at 33, footnote 92.

<sup>7</sup> *Id.* at 202, 205.

used for comparisons to prior periods to the extent that necessary systems were not already in place.

- Creating and providing calculations of the “GHG intensity” ratios discussed in the Proposed Rule would not add any significant value, to investors in our securities or otherwise, and we do not believe that it will facilitate comparability of companies in terms of GHG emissions per unit of economic value. As a service provider, we are concerned that there is not a unit of production that spans industries or even economic sectors that can be used to convey consistently applied, meaningful information to investors about our emissions impact relative to our economic value produced.
- We believe that the proposal to require disclosure of Scope 3 GHG emissions information should be eliminated as there is currently no reliable framework to collect and report Scope 3 GHG emissions in the manner proposed. In particular, we do not possess all of the information required to calculate Scope 3 GHG emissions as contemplated by the Proposed Rule, and we would face challenges attesting to the reliability of any such estimates. The Commission acknowledges this concern in the Proposed Rule, describing the proposed safe harbor for Scope 3 GHG emissions information as being “intended to mitigate potential liability concerns associated with providing emissions disclosure based on third-party information.”<sup>8</sup> Nonetheless, the specter of protracted and expensive litigation will act as a continuing distraction for our team preparing this disclosure.

We also have concerns regarding the unintended effects of adopting disclosure requirements for Scope 3 GHG emissions. For example, small suppliers and other companies with whom we conduct business would be ill-equipped to provide data at the level necessary to allow us to prepare required Scope 3 GHG emissions disclosure. The cost and complexity associated with collecting and providing information necessary for reporting Scope 3 emissions will drive up costs unnecessarily for a wide range of companies – including many that are not required to file reports with the Commission, but which provide critical services and products to the offshore drilling market. These measures will put smaller firms at a competitive disadvantage. One can expect to see a natural move over time toward using larger suppliers, which are often better equipped to bear the financial consequences of burdensome regulation as compared to smaller competitors. The natural result will lead to fewer businesses in the supply chain, less competition and higher costs to our business and the consumer and an erosion of shareholder value. Separately, we can foresee certain firms being discouraged from seeking to access the U.S. capital markets, especially those in the energy industry, which has experienced calls for disinvestment or divestment from certain corners of the financial market and may encourage some companies to avoid entanglements with U.S. registrants that are required to disclose Scope 3 emissions information. Both could reduce innovation, hinder free-market developments, place more inflationary stress on supply chains, and ultimately increase costs to U.S. consumers.

We also emphasize that, although we service the oil and gas industry, it does not necessarily follow that we would have material Scope 3 emissions. We note with concern the Commission’s statement that, “[f]or oil and gas product manufacturers, for example, Scope 3 emissions are likely to be material and thus necessary to an understanding of a registrant’s climate-

---

<sup>8</sup> *Id.* at 212.

related risks.”<sup>9</sup> To the extent that the Commission intends to create a presumption that all participants in the oil and gas industry have material Scope 3 GHG emissions, we would strongly disagree. If a registrant believes such information is material to its investors, there are already existing frameworks that require its disclosure, but it is reasonable for companies to conclude that such information is not material to their business or to their investors.

## **II. The Extensive Disclosure of Climate-Related Information Required by the Proposed Rule, including Financial Statement Metrics, Will Not Yield Decision-Helpful Information for Investors**

The requirement in the Proposed Rule that companies disclose, in a note to their financial statements, certain disaggregated climate-related financial statement metrics on a line-item basis will not achieve the Commission’s stated goals of promoting consistency and comparability of disclosure among registrants. The judgments and assumptions upon which the Commission bases the Proposed Rule depart in important ways from generally understood principles of accounting, and the proposal to impose an extraordinarily low bright-line threshold on a line-item basis in respect of notes to a company’s financial statements will result in voluminous and often irrelevant or unimportant disclosure at great cost to registrants.

At the outset, the premise that climate-related disclosures should be linked to the parameters of a company’s consolidated financial statements is unprecedented and conflicts with existing emissions reporting regimes used by Transocean and others in industry. As discussed above, imposing disclosure requirements that partially overlap others already in place adds to the burdens on companies in preparing required information. At a minimum, registrants should have the flexibility to determine the appropriate parameters for evaluating climate-related information in preparing any required disclosure in order to conform with that company’s operations and other reporting obligations. This would better promote the Commission’s goal of generating reliable disclosure by companies.

In proposing to require disclosure of climate-related financial statement metrics, the Commission claims that preparing these metrics “would involve estimation uncertainties that are driven by the application of judgments and assumptions, similar to other financial statement disclosures.” We respectfully disagree. The Proposed Rule departs from important accounting principles incorporated into ASC 450 (Contingencies) when determining what disclosures are required under generally accepted accounting principles in the United States with respect to certain loss contingencies. Under ASC 450, loss contingencies are recognized only if there is an impairment of an asset or the incurrence of a liability as of the date of the statement of financial position. A loss must be accrued if both of the following conditions are met: (1) it is probable that an asset has been impaired or a liability has been incurred at the date of the financial statements and (2) the amount of loss can be reasonably estimated. There is also specific guidance to address circumstances when a loss is probable, but an estimate of the amount of loss is not practicable, and when a loss is reasonably possible. Depending on the circumstances, a loss may be required to be accrued, an estimate of loss may be required to be disclosed, or the facts and circumstances that may result in a loss may be required to be disclosed. General or unspecified business risks are not considered loss contingencies. The Proposed Rule, however, severs in relation to the principles

---

<sup>9</sup> *Id.* at 165.

underlying Regulation S-K, the link between the uncertainty estimates and a specific future event while also lowering the threshold at which disclosure of “potential” negative impacts is required in relation to climate-related risks. A registrant would be required to disclose the impact of “potential negative impacts” not only from physical risks attributable to climate but also transition risks. We believe that disclosure based on this heightened level of uncertainty, and with respect to a broad array of risks not tied to specific claims or events that may not materialize for decades, is not appropriate in a registrant’s financial statements.

We urge the Commission also to consider that there is sharp disagreement among many professionals in how to analyze the impacts of climate-related events and transition activities on a business and any communities it affects. For example, the parameters of what constitutes a “climate-related” event or risk are not presently defined in current accounting guidance. There is no generally accepted view of when climate-related conditions are sufficiently linked to impacts on financial statements so as to require disclosure, with one practical impact being that present accounting systems are not designed to capture and present such information. While the Commission provides examples of “severe weather-related events” and “natural conditions” that it believes potentially would trigger the proposed disclosure requirement, we do not consider this as an illustrative list of examples to provide sufficient guidance to personnel charged with preparing, certifying or auditing this information.

Unless sufficient guidance is established, and accounting processes and systems have been updated accordingly, requiring registrants to assess all potential impacts in connection with the preparation of financial statements so as to demonstrate that all of the “potential negative impacts of climate-related conditions” have been identified and reflected in a registrant’s financial statements on a line-item basis will be extremely burdensome. There is inherent judgment in concluding an event is, or is not, “climate-related,” and the phrase itself is tinged with political judgment in any public communication. Without sufficient guidance as to when or how to conclude that a “climate related” event is linked to a financial statement impact, our personnel acting in good faith may reach different conclusions than personnel at other companies, undermining the goal of the Proposed Rule in promoting consistent and comparable disclosures. For example, operators in the offshore drilling industry plan and design systems to mitigate the potential impacts of various weather events, including hurricanes and tropical storms, in the U.S. Gulf of Mexico and ensure the safety of crew. To the extent that industry participants are not able to avoid the impacts of these events altogether, accounting personnel would be required to assess if and to what extent such impact is the result of a “climate-related” event. The circumstances in which these impacts can arise present substantial challenges in parsing to what extent an impact is “climate-related” as compared with a consequence of operational decisions. In this example, because companies do not universally apply the same systems and framework for their respective operational decisions, it is impractical, if not impossible, to create a universal standard for determining when a climate-related event should be linked to a financial statement impact that would result in any consistent application by registrants, or even allow for any meaningful comparison of financial statement impacts among multiple registrants.

As to financial impacts metrics, the quantification of a bright line standard requiring disclosure if the aggregated impact of all severe weather events, other natural conditions, transition activities, and identified climate-related risks unless the absolute value of the aggregate impacts are less than one percent of the total line item for the relevant fiscal year is extraordinarily low.

Investors are also not well-served by rules that would require disclosure of significant amounts of information that is not material to them. Both the United States Supreme Court and the Commission have historically recognized the dangers of over-disclosure, including the resulting *diminishment* of investors’ ability to make informed investment decisions. The Supreme Court has long noted the danger that “too low a standard of materiality” may “bury the shareholders in an avalanche of trivial information – a result that is hardly conducive to informed decisionmaking.”<sup>10</sup> Former Chair Mary Jo White echoed these concerns, remarking that “[w]hen 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 to wade through the volume of information she receives to ferret out the information that is most relevant.”<sup>11</sup> Where the registrant — which is most intimately familiar with the operations and financial position of the company — has not determined that this type of information is material, its inclusion may well be counter-productive.

The Commission argues that a 1% quantitative threshold is used in other contexts<sup>12</sup>, but the examples the Commission cites are circumstances where the quantitative amounts involved are knowable under current accounting practice, have discrete impacts on specific financial line items, and address scenarios in which more detailed disclosure is appropriate. Rather than facilitating comparability, consistency and reliability for investors, disclosure of impacts using the proposed quantitative threshold heightens the risk of confusion and may lead to repetitive disclosure of information far in excess of its relative importance to an investor. By introducing an unworkably low, bright-line threshold for reporting climate-related impacts, the Commission may inadvertently signal that climate-related impacts are more important to an investor than financial impacts of other matters. The volume and nature of this type of disclosure may overwhelm other disclosure, including potentially material or more significant financial information contained elsewhere in the notes to financial statements. Of note, this impetus for overbroad and repetitive disclosure stands in contrast to the Commission’s efforts to encourage conciseness and clarity for investors in other areas of a company’s periodic reports.<sup>13</sup> In addition, the bright line standard creates a framework under which positive and negative impacts of climate-related events with respect to a line item may offset each other, with registrants required to make quantitative assessments based on the absolute value of impacts in respect of each line item. This represents a significant departure from typical accounting practices, which do not ordinarily provide for offsetting amounts in different contexts.

For similar reasons, the proposal to require disclosure of expenditure metrics should be abandoned. We do not believe that the requirement would provide decision-useful information for investors but would require companies to spend substantial time and resources to calculate and document, on a disaggregated basis, business decisions regarding the timing and amounts of expenditures and capitalized costs. This is particularly true for expenditures related to transition activities, which often are taken based on a blend of considerations across longer time horizons

---

<sup>10</sup> *Basic v. Levinson*, 485 U.S. 224, 231 (1988).

<sup>11</sup> Chair Mary Jo White, Speech, National Assoc. of Corp. Directors, Oct. 15, 2013. <https://www.sec.gov/news/speech/spch101513mjw>.

<sup>12</sup> See Proposed Rule at 121, footnote 347 for examples cited by the Commission.

<sup>13</sup> For example, the Commission’s 2020 amendments to modernize certain sections of Regulation S-K require summary risk factor disclosure of no more than two pages if the risk factor section exceeds 15 pages. Release Nos. 33-10825; 34-89670.



than other expenditures. Some of these considerations are likely to be competitively sensitive or would otherwise not be appropriate to publicly disclose at the time the Proposed Rule would require.

We would instead recommend that the Commission continue to look to the principles expressed in the 2010 Guidance to guide what disclosure is appropriate for companies to make on climate-related matters. Expanding this type of disclosure with a new, required note to a company's financial statements, and subjecting this information to accounting systems and controls without an existing framework for doing so, imposes a substantial burden on us in connection with the preparation of our financial statements. A registrant can reasonably be expected to identify and to discuss important risks in these categories, but that discussion should be informed by that company's assessments and judgments as to the likelihood and magnitude of each of them. We believe that a reasonable location to present this narrative disclosure, to the extent determined material by a registrant, could be Management's Discussion and Analysis of Financial Condition and Results of Operations.

### **III. Implementing the Proposed Rule Would Impose Other Substantial Burdens on Companies and Unnecessarily Expose Many Public Companies to Increased Risk of Liability**

In addition to the concerns expressed above regarding the substantive disclosure that would be required by the Proposed Rule, the process and timing of preparing and location of such disclosure would create a substantial burden on registrants, erode shareholder value due to the excessive cost of compliance and unnecessarily expose registrants to new and unprecedented paths of potential liability. Additional concerns with respect to these and related risks include the following:

- The timeline for implementing the Proposed Rule is far too aggressive. If adopted as proposed, the compliance date for the proposed disclosures (other than Scope 3 emissions disclosure) in annual reports for large accelerated filers, such as Transocean, could be as early as the fiscal year 2023. That suggests that the necessary systems for compliance be in place by the end of this year and that we would have already needed to have them in place to the extent necessary for comparison to prior periods. For any adopted rule, there should be a multi-year transition period, even for large accelerated filers.
- The wide-ranging obligations that would be imposed by the Proposed Rule and the associated investment of time and resources needed to create and integrate a new compliance system and related processes would not allow a fair or effective transition period to start until appropriate guidelines are issued and the concerns of affected companies and interested stakeholders have been sufficiently and decidedly addressed. These include concerns that the Proposed Rule (i) exceeds the Commission's authority and the Commission's historic role in regulating the U.S. financial market and (ii) represents an unprecedented expansion of the federal securities laws

without direction from Congress, both of which have been expressed by many companies, trade associations and other interested constituencies.<sup>14</sup>

- The proposed climate-related disclosure requirements, including the proposed financial statement metrics, in annual reports will unduly burden the teams responsible for preparing such disclosure. With large accelerated filers presently required to file annual reports on Form 10-K within 60 days of a registrant's fiscal year end, we believe the Commission significantly underestimates the burdens associated with increasing the scope of disclosure information to be compiled, reviewed and audited at a registrant within that timeframe.<sup>15</sup> In order to help reduce costs to a registrant, the Commission should provide additional time for companies to prepare required climate-related disclosure, such as by establishing a deadline to publish a sustainability report later in the fiscal year, as registrants typically do.<sup>16</sup>
- By requiring financial statement disclosures to be based upon new, arbitrarily low levels of materiality that necessarily incorporate subjective assessments of climate-related risks without clear guidance from the Commission on how to assess and incorporate any such risks into financial statement disclosures, the Proposed Rule risks the creation of new types of disclosure claims if unforeseen or unavoidable risks materialize. The increased burden on management and financial reporting teams to document and support their conclusions in these respects will be substantial and distracting from their core function and day-to-day responsibilities.
- Moreover, we believe that inclusion of climate-related information in filings to the Commission significantly increases risk of shareholder litigation, including from the active plaintiff bar, a risk that investors in registrants should not be forced to bear. We have substantial concerns that, particularly for companies that indirectly or directly participate in the energy industry, adopting the Proposed Rule will usher in a new, energized era of securities litigation that would churn frivolous lawsuits that registrants will have to address at great cost and expense using both internal and external resources. Congress has recognized the great harm that baseless securities litigation lawsuits may have on shareholders of public companies and

---

<sup>14</sup> See, e.g., Comment letter to the Proposed Rule submitted by Lawrence A. Cunningham, Professor of Law, George Washington University, Corresponding Author, on Behalf of Twenty-Two Professors of Law and Finance. See also Commissioner Hester M. Peirce Statement, We are Not the Securities and Environment Commission - At Least Not Yet, March 21, 2022 <https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321>.

<sup>15</sup> We also do not believe that this concern is sufficiently addressed by permitting a registrant to use a reasonable estimate of its GHG emissions for its fourth fiscal quarter if no actual reported data is reasonably available, as long as the registrant later discloses any material difference between the estimate used and the actual, determined GHG emissions data for the fourth fiscal quarter. A registrant will frequently find itself in the position of having to determine whether previously disclosed emissions information that it now knows to be incorrect must be updated. This will undermine efforts to generate consistent disclosure for a registrant across multiple years, and because any initial estimate may be incorrect, it will simultaneously reduce the reliability of such information for investors. Registrants may also find it challenging to develop adequate procedures with respect to annual GHG emissions data when it is partially based on an estimate of an amount that would be known soon after the estimate has been disclosed.

<sup>16</sup> We also believe it is important that registrants not be impeded from carrying out capital markets transactions in the United States while the registrant may still be collecting and analyzing information required in connection with preparing climate-related disclosure.

on the registrants themselves, noting that even the mere *filing* of a putative shareholder class action may have an “in terrorem” effect.<sup>17</sup>

- A registrant should control the timing and extent to which it communicates with investors and other stakeholders about any “transition plan” that it may have adopted. The Proposed Rule may compel companies to disclose potentially sensitive and competitive information earlier than is appropriate. For example, a transition plan may incorporate future plans to divest a division or other part of a company’s business. Requiring a company to disclose prematurely these aspects of its transition plan would adversely impact the registrant, including potentially harming employee and community relations, and would impede the registrant’s ability to manage an efficient and orderly divestiture process. Requiring this disclosure also will likely have a chilling effect on the progress of goals and sustainability initiatives at companies that are at the early stages of addressing the transition to a low carbon economy. For example, while the offshore drilling industry has made substantial strides in furtherance of sustainability initiatives and reporting ESG related data, the industry’s sustainability initiatives and reporting are not as mature as other, better capitalized sectors, such as global technology companies. The Proposed Rule risks slowing progress in sustainability initiatives as companies may have concerns that disclosure required in connection with adopting a transition plan would require revealing sensitive strategic planning information and expose the registrant to additional liability.
- Similarly, while we agree with the Commission’s determination not to require a registrant to conduct scenario analysis, we also believe that registrants that may use scenario analysis in business planning should not be required to disclose the parameters, assumptions and analytical choices. These analytical tools and the resulting analyses are tools utilized to inform internal decision making. Requiring this disclosure may discourage the use of these tools by some registrants or open them up to unnecessary and distracting criticism of the use of underlying assumptions, for which there are not settled views as to approach.
- The requirement that a registrant include in its description of an identified physical risk the location of the properties, processes, or operations subject to the physical risk at a ZIP code level or “a similar subnational postal zone or geographic location”<sup>18</sup> must account for sensitivities regarding disclosing the location of certain assets and operations, as well as the fact that material physical assets subject to a physical risk, such as offshore drilling rigs, are mobile. It is common for offshore drillers to provide periodic updates to the market on the general location where its rigs are operating through fleet status reports (*e.g.*, U.S. Gulf of Mexico), but drillers typically will not provide more specific information about their location as this may raise security concerns for the rig, as well as confidentiality concerns with respect to a customer’s lease and well locations. Registrants operating mobile assets should be permitted to describe at a general level the physical risks in the location of operations, as many already do, and the Commission should not require disclosure of the specific physical location of mobile assets.

---

<sup>17</sup> S. REP. NO. 104-98, at 6 (1995), *reprinted in* 1995 U.S.C.C.A.N. 679, 685 (“The dynamics of private securities litigation create powerful incentives to settle . . .”).

<sup>18</sup> See Proposed Rule at 59.

- The Commission should provide additional guidance as to whether a director’s expertise in climate-related risks can be demonstrated through Board education or whether such expertise must be demonstrated by prior professional experience, as it does with respect to the Audit Committee Financial Expert designation.
- The safe harbor protections included within the Proposed Rule are inadequate. Safe harbor provisions are an important recognition that registrants should not be subject to liability for disclosures made in good faith that, due to their nature, may be too easily questioned by opportunistic litigants. This protection also serves to encourage registrants to provide fuller disclosure in such areas, aware that while they remain subject to the Commission’s watchful eye, they can safely disclose information helpful to investors without undue risk of liability. This is all to the benefit of investors, who gain the benefit of disclosure, without the risk that any investment will be impaired by the significant expense that is associated with even frivolous securities litigation. The safe-harbor provisions of the Private Securities Litigation Reform Act (“PSLRA”), paired with the limited additional safe harbor included in the Proposed Rule in connection with Scope 3 reporting, are not sufficient. Without additional protections, the Proposed Rule will bring with it significant liability risk in connection with the sweeping new disclosures that it is widely recognized will be difficult to implement. At a minimum, the Proposed Rule should include Scope 1 and Scope 2 reporting (the latter of which registrants will necessarily need to rely on other entities to provide), as well as any discussion of scenario analysis, within the safe harbor presently proposed for Scope 3 GHG emissions. The Commission also should expressly state that the medium- and long-term impact analysis required for climate-related disclosure is necessarily covered by the PSLRA’s safe-harbor protections for forward-looking statements. These safe harbor protections should extend to all filings with the Commission, including registration statements.

\* \* \* \* \*

In conclusion, we remain committed to protecting our people and the environment and to disclosing information that is relevant to our investors and helps them evaluate an investment decision in Transocean securities. We are also supportive of the Commission’s transparency and standardization objectives with respect to the disclosure of information that is material to a registrant’s investors. As detailed above, we do not believe that the Proposed Rule accomplishes these objectives because the reporting framework therein would not promote consistent, comparable and reliable disclosure and would not result in the creation or disclosure of helpful information for investors; however, if adopted, we believe the reporting framework would impact not only public companies but non-registrants in the supply chain and would levy significantly higher costs, create considerably increased strain on company resources without a corresponding benefit and usher in a new, unprecedented level of liability on public companies.

We appreciate the opportunity to comment on the Proposed Rule and respectfully request that the Commission consider the concerns expressed and recommendations set forth above.

Respectfully submitted,

TRANSOCEAN LTD.

A handwritten signature in blue ink, appearing to read "M L Mey". The signature is written in a cursive style with a large initial "M" and "L".

Mark L. Mey  
Executive Vice President and Chief Financial Officer