SCHNEIDER

June 17, 2022

VIA E-MAIL (rule-comments@sec.gov)

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F. Street NE
Washington, D.C. 20549

Re: Public Comment on Enhancement and Standardization of Climate-Related Disclosures for Investors Proposed Rule – Release Nos. 33-11042; 34-94478; File No. S7-10-22

On behalf of Schneider National, Inc. ("Schneider," "we" or the "Company"), thank you for the opportunity to respond to the Securities and Exchange Commission's (the "SEC") request for public comment on its Enhancement and Standardization of Climate-Related Disclosures for Investors proposed rule (the "Proposed Rule").[1] Schneider is a large, accelerated filer and will be directly impacted by the entirety of the SEC's proposed expansion of required climate disclosures. Schneider has a longstanding commitment to being a responsible environmental steward. To that end, Schneider has integrated environmental, social, and governance ("ESG") priorities across all of its business lines and has publicly shared those goals with its investors. It is with that spirit and goodwill that Schneider submits this comment.

In our opinion, the Proposed Rule as currently drafted, amounts to an unfunded and unwieldy mandate on public companies without a commensurate benefit to investors. As discussed below, the Proposed Rule will impose significant expense, lead to disclosure of unreliable information, invite costly litigation, and will alter the services Schneider is currently providing. In particular, we highlight the following areas of concern below:

1. Scope 3 emissions data is inherently difficult to ascertain, highly speculative and such data is not material information for investment decisions. (Pg. 3)
2. The materiality framework in the Proposed Rule is vague, shifting, and will likely require speculation by registrants and reliance on third parties for information. (Pg. 6)
3. In order to limit excessive exposure to liability, the SEC should expand its proposed safe harbor and provide that the required disclosures be "furnished" rather than "filed." (Pg. 8)
4. The Proposed Rule is unnecessary and will interfere with an effective voluntary disclosure regime. (Pg. 10)
5. The Proposed Rule unduly interferes with business management decisions and corporate governance. (Pg. 11)

[1] 87 Fed. Reg. 21334 (Apr. 11, 2022) (hereinafter cited as the "Proposed Rule").

6. Attestation is costly and is not based on a standard framework. (Pg. 12)
7. Implementing the Proposed Rule at this time will have a severe adverse impact on America's supply chain. (Pg. 13)
8. The Cost-Benefit Analysis Is Unfavorable. (Pg. 14)

For these reasons, we respectfully request the SEC revise and delay implementation of its Scope 3 mandate, which is the most problematic, resource-intensive disclosure requirement outlined by the Proposed Rule, and provides the least amount of reliable, useful, comparable data for investors. Instead, we believe the SEC's existing disclosure regime, supplemented by existing, voluntary reporting that is driven by market forces and investor demands, will continue to satisfy the SEC's mission of protecting investors.[2]

About Schneider

Schneider is one of the largest providers of surface transportation and logistics solutions in North America. We offer truckload, intermodal, drayage, and other logistics services to a diverse customer base throughout the continental United States, Canada, and Mexico. We leverage artificial intelligence, data science, and analytics to provide innovative, automated, solutions that aggregate and match freight capacity with shipper demand and coordinate the movement of customer products timely, safely, and effectively. Schneider was founded in 1935 in Green Bay, Wisconsin, and has been a publicly traded entity since 2017. In 2021, Schneider generated $5.6 billion in operating revenues. Schneider holds itself and its employees to the highest ethical standards. We have approximately 16,000 associates worldwide including over 10,500 drivers, who, collectively, drive more than 9,300,000 freight miles per day. To that end, we own and operate approximately 10,300 tractors.

Schneider prioritizes doing business responsibly and sustainably. At Schneider, we define sustainability broadly as meeting both our and our stakeholders' needs, without compromising the ability of future generations to meet their own needs. We seek to accomplish this by maintaining a modern fleet to maximize fuel efficiency, consolidating freight and introducing technologies to coordinate the movement of products timely, safely, and efficiently. In addition, we continue to evaluate and develop alternative fuel vehicles, and our efforts to improve overall fleet fuel efficiency and reduce greenhouse gas ("GHG") emissions are among our top priorities. As publicly disclosed to our investors, Schneider is adding a limited number of battery-electric zero emission trucks to our fleet to contribute toward the Company's goal of cutting its carbon dioxide emissions by 7.5% per mile by 2025 and 60% per mile by 2035.[3] Our efforts have been recognized by industry leaders and government agencies, including the U.S. Environmental Protection Agency ("EPA") SmartWay® Transport Partner.[4]

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[2] This mission is in part articulated under 15 U.S.C. § 77b(b), and provides: "Whenever pursuant to this subchapter the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation."

[3] *See* "2021 Corporate Responsibility Report: Delivering with a Purpose," 23, Schneider National, Inc. (2022), https://assets.contentstack.io/v3/assets/bltd6fbf0727eef6ef7/blt7df5275cdc2ab903/628be49930bc9653db3ad49d/Schneider_2021_Online_CRR.pdf.

[4] *Id.* at 29.

Our comments are offered from a perspective that has been largely unaddressed: the impact the Proposed Rule will have on transportation and logistics providers – a vital pillar of the economy – which are responsible for moving 72.5% of all freight in the U.S.[5] While the Proposed Rule will certainly have an impact on other industries, we believe the impact on the transportation and logistics industry is critical because of the ongoing supply chain constraints resulting from the COVID-19 pandemic and other market conditions. Indeed, even with a two-year or more implementation schedule, the Proposed Rule risks penalizing an industry that is literally driving the national supply chain and thus serving a critical, life-supporting function.

I. Scope 3 emissions data is inherently difficult to ascertain, highly speculative and such data is not relevant material information for investment decisions.

The Proposed Rule requires companies to disclose Scope 3 emissions if: (i) the company has set an emissions reduction target that includes Scope 3 emissions or (ii) those emissions are material.[6] Scope 3 emissions are indirect emissions generated from sources that are neither owned nor controlled by the company, including upstream and downstream activities and goods.[7]

To appreciate the challenges of implementing the Proposed Rule's Scope 3 emissions disclosures faced by transport and logistics providers, additional context may be helpful. Schneider has three, primary service segments: truckload, intermodal, and logistics.

Truckload: Schneider employs drivers who operate Schneider trucks and trailers to transport freight across North America. Schneider also uses third party "owner-operators" – independent contractors who own their own trucks and who either operate under Schneider's operating authority or their, independently obtained, operating authority. If the tractor used by these owner operators are leased, Schneider may need to calculate the emissions generated by the third-party carrier's leased vehicle—which is operated independent of Schneider. The Scope 3 emissions we may be required to collect, validate, analyze and, potentially, report on in order to comply with the Proposed Rule include the emissions released by petroleum and gas manufacturing companies that produce the fuel we purchase to run some of our fleet.

Relatedly, because the Proposed Rule is not tailored to specific industries, there is confusion as to whether emissions fall within Scope 1 or Scope 3. For example, it is a common practice within the trucking industry, including Schneider's Truckload services segment, to contract with owner-operators of trucks who operate their trucks under the motor carrier's (i.e., Schneider's) motor carrier authority. Where, as in the example, a motor carrier is operating a truck in interstate commerce that is not owned by it, it can only do so under a federally regulated lease arrangement. Pursuant to federal regulation, in this scenario, the motor carrier must have "exclusive possession, control, and use of the equipment for the duration of the lease."[8] The Proposed Rule defines Scope 1 emissions as "direct GHG emissions from operations that are owned or controlled by a

[5] "Economics and Industry Data," American Trucking Associations, Inc. (2022) https://www.trucking.org/economics-and-industry-data.
[6] Proposed Rule, at 21374.
[7] *Id*. at 21344.
[8] 49 C.F.R. § 376.12(c)(1).

registrant."[9] Yet the definition of Scope 3 emissions includes emissions from a "registrant's leased assets related principally to purchased or acquired goods or services."[10] It will be reasonable to categorize emissions from the contractor's use of equipment either as Scope 1 emissions or Scope 3 emissions. However, that means reporting may not be "consistent" or "comparable" if treated as Scope 1 by one registrant and as Scope 3 by another registrant. Whether the owner-operator is under Schneider's authority or its own authority, Schneider will still have to account for the emissions released by petroleum and gas manufacturing companies that produce the fuel owner-operator purchases to run his/her truck and the emissions released by truck and equipment makers who manufacture the truck that he/she operates.

Intermodal: For intermodal, Schneider contracts with or tenders loads to railroads to facilitate the delivery of goods across the rails.[11] During a typical intermodal rail delivery, each train operated by the railroad will be hauling hundreds of loads of freight, in multiple rail containers, for multiple customers or intermodal carriers. We anticipate that one of our largest sources of Scope 3 emissions will be the railroads. Each train is able to haul hundreds of loads which is fuel efficient but, it is unclear in the Proposed Rule how Schneider will be required to determine: 1) the overall emissions of each train; and 2) the allocable portion of such emissions to Schneider vis-a-vis other parties who also have containers being transported on the train.

Logistics: Schneider also arranges transportation for clients as a broker. Our logistics services consist primarily of non-asset freight brokerage services, warehousing, supply chain services and import/export services. Because Schneider's own equipment is not involved, this service relies on contracting with other carriers to provide the actual transportation of a shipper client's cargo. In circumstances where another motor carrier or owner-operator transports freight using its own truck(s) and trailer(s), Schneider will need to rely on that carrier or owner-operator to calculate its Scope 3 emissions. Such emissions will include a host of components, including emissions created from the manufacturing of its truck and trailer, the emissions produced from manufacturing the composite parts that are used to build the truck and trailer by suppliers and sub-contractors, the emissions from the delivery of that truck and trailer from the third-party manufacturer, the emissions from the third-party manufacturers' employees and suppliers who traveled to the manufacturing facility, the route selected, the freight carried, and so forth down the value chain.[12] The confusion over where to cut off how far to look back at value chain emissions will undoubtedly lead to inconsistent reporting that will detract from comparability.

As previewed above, the Scope 3 disclosure requirements in the Proposed Rule will impose significant costs on Schneider because of the following issues and concerns:

1. It will require significant resources to collect, quantify, and ensure the accuracy of Scope 3 data from third party sources, many of whom are not public companies nor

[9] Proposed Rule, at 21374 (citing proposed 17 C.F.R. § 229.1500(p)).
[10] *Id*. at 21466 (proposed 17 C.F.R. § 229.1500(r)(1)(8)).
[11] Generally, Schneider's Intermodal services segment does not manage ocean shipments or haul shipping containers between ports and warehouses for conveyance onto ships, trucks, or rail cars. Schneider offers port dray services through its Logistics segment, consisting of transportation of loaded shipping containers from ports to the rails.
[12] Our brokerage partners and owner-operators do not currently have any obligation under their respective contracts with Schneider to provide this information, nor does Schneider currently have the luxury of leverage over these third parties given the current shortage of driver capacity in the industry and other competitive dynamics.

under their own reporting regime, even before Schneider determines this information is material;

2. It will require companies like Schneider to spend significant resources to compile and verify the necessary disclosures, including hiring a number of new employees and external advisors; and
3. It will divert time and attention from our existing executive, financial reporting, legal and other personnel.

If that were not troublesome enough, a brief description of the trucking industry may help describe the situation Schneider's logistics segment faces in obtaining even the most straightforward Scope 3 emissions data from its carrier partners (*i.e.*, those carriers' Scope 1 emissions). Shippers and manufacturers will certainly face similar problems obtaining emissions data from large portions of their trucking supply chain. As of February 2021, there were 996,894 for-hire motor carriers.[13] Of those, 97.4 percent operate fewer than 20 trucks and 91.5% operate six or fewer trucks.[14] And there are roughly only 25 publicly traded motor carriers.[15] Therefore, it is folly to believe that if the Proposed Rule becomes effective, more trucking companies will have to report Scopes 1 and 2 emissions and "ease the burden of complying with the Scope 3 emissions disclosure requirement" for brokers, shippers, and others having to report on their supply chain.[16] Only 25 publicly traded motor carriers will have to report their Scopes 1 and 2 emissions while the 97.4% of motor carriers with fewer than 20 trucks will be hard-pressed to track and report their emissions reliably to brokers and shippers.

Setting aside the resource pressures the Scope 3 mandate creates, implementing a process for identifying, analyzing, tabulating, and reporting Scope 3 emissions is equally problematic. The accuracy of Schneider's reporting will be entirely dependent on the cooperation and goodwill of third parties who have contracted with Schneider's customers, some with whom Schneider has never interacted or done business. In addition, although the Proposed Rule provides general guidance regarding upstream and downstream emissions that might be included within Scope 3 emissions, because it does not mandate a specific methodology for calculating GHG emissions,[17] there will be inconsistencies in each third-party's calculation. If Schneider were to allocate half of its operating budget to developing and implementing a process for accurately collecting Scope 3 emissions data, it will still be unlikely to accurately report this information.

The SEC has recognized the burden of disclosing Scope 3 emissions by exempting smaller reporting companies from the requirement. The burden imposed, however, is applicable to every filer: big and small. The SEC should analyze the impact of imposing the Scopes 1 and 2 disclosure regimes, and then in turn, extrapolate those costs to analyze the impact the Scope 3 mandate will have on reporting companies. This analysis will better inform the SEC that such information is feasible to obtain and worth the burden that it imposes.

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[13] American Trucking Associations, Inc., *supra*, n. 5
[14] *Id*.
[15] *See* "Current Stock Prices for Trucking, Logistics Companies," Transport Topics (2022) https://www.ttnews.com/articles/current-stock-prices-trucking-logistics (listing all publicly traded U.S. and Canadian trucking and transportation stocks in the autonomous, truckload, less-than-truckload, package, logistics and leasing categories).
[16] Proposed Rule, at 21391.
[17] *Id*. at 21395.

II. The materiality framework is vague, shifting, and will likely require speculation by registrants and reliance on third parties for information.

The Proposed Rule purportedly limits the Scope 3 mandate by requiring companies to disclose their Scope 3 emissions if those emissions are "material," or if the company has set a "GHG emissions reduction target or goal that includes its Scope 3 emissions."[18] The triggering of a disclosure requirement merely as result of setting a GHG emissions reduction target or goal is a departure from the traditional materiality standard. Proposed Item 1502 of Regulation S-K also strays from the Supreme Court's longstanding articulation of the materiality standard applicable to disclosure and requires a registrant to "[d]escribe any climate-related risks reasonably likely to have a material impact on the registrant … which may manifest over the short, medium, and long term."[19] The exhaustingly prescriptive provision requires a description of physical risks (further broken down by acute or chronic risks) and transition risks.

In dramatically expanding the reaches of "materiality," the Proposed Rule requires a registrant to "[d]escribe ***any*** climate-related risks reasonably likely to have a material impact on the registrant … which may manifest over the short, medium, and long term."[20] The rule thereby says that it is no longer the "total mix" of information that is available and relevant to investors – it is instead any piece of information that could possibly be relevant, now, or in the near future. It thereby places the burden on companies to anticipate any future climate change related development – no matter how far into the horizon – as affecting the sort of information that should be collected and disclosed, ***today***. And, it shifts the burden to disclosing any and all information, possibly contemplated. The Proposed Rule instructs companies that materiality doubts should "be resolved in favor of those the statute is designed to protect, namely investors."[21] Public companies do not have a crystal ball and no disclosure regime should be reliant on such a chimera.

The result of the Proposed Rule requiring Scope 3 emissions disclosures is likely to be that companies will find it difficult to provide specific, meaningful disclosures relating to the impact of Scope 3 emissions on their business operations and financial performance and will end up disclosing information that is not "material" as that term has historically been understood. The materiality limitation in the Proposed Rule is not particularly helpful, because the SEC suggests that Scope 3 emissions generally are material and instructs companies that materiality doubts should "be resolved in favor of those the statute is designed to protect, namely investors."[22] Further, the Proposed Rule offers, without explicitly endorsing a possible quantitative metric (40% of a company's total GHG emissions) at which Scope 3 emissions may be material, and an abstract qualitative test: "where Scope 3 represents a significant risk, is subject to significant regulatory focus," or "if there is a substantial likelihood that a reasonable investor will consider it important."[23] This thumb on the scale

[18] *Id*. at 21377-78.
[19] *Id*. at 21351-52 (citing *Basic Inc. v. Levinson*, 485 U.S. 224, 231, 232, and 240 (1988) (interpreting materiality as "a substantial likelihood that a reasonable investor will consider it important when determining whether to buy or sell securities or how to vote")).
[20] *Id*. at 21467 (emphasis added).
[21] *Id.* at 21378.
[22] *Id*.
[23] *Id*. at 21379.

in favor of materiality is problematic for companies attempting to disclose decision-useful, material Scope 3 emissions in compliance with the Proposed Rule.

The risks investors attribute to the high level of Scope 3 emissions, in turn, will be inappropriately speculative. For example, an investor may conclude that high carbon emissions by our suppliers (Scope 3 emissions) will lead to additional regulation and lower demand for our freight and logistics services. But this conclusion is speculative and will require the investor to estimate the chances of regulation curbing these emissions, which will in turn require the investor to speculate on the chances of federal or state-level action by congress, the executive branch, state legislators and officials, or other agency orders. This sort of analysis is highly dependent on exogenous factors, and unlikely to aid an investor in making a realistic determination of their investment risks.

The vagueness of the Proposed Rule's materiality standard also leaves companies vulnerable to enforcement actions and increased litigation risk. The SEC, noting that the materiality determination may be difficult to apply and for investors to interpret, provided in the Proposed Rule that companies may not only have to disclose material, Scope 3 emissions, they may also have to disclose their analysis and determination for why certain Scope 3 emissions are material and why others are not.[24] This sort of regulatory obscurity is the perfect formula for class action attorneys who prey on issuers (and their shareholders) with nuisance suits rooted in grey legal requirements.

At minimum, the SEC should clarify that "reasonably likely" means there is a greater than 50 percent chance of probability. By referring to Release No. 33-10890, providing guidance on what is to be covered as reasonably likely to have a material impact on future operation in the MD&A,[25] the SEC has perpetuated an interpretation that has been criticized as inscrutable and vexed registrants. With climate change, an area fraught with uncertainty, a more concrete standard is necessary.

III. In order to limit excessive exposure to liability, the SEC should expand its proposed safe harbor and provide that the required disclosures be "furnished" rather than "filed."

A. Expanded safe harbor

In the Proposed Rule, the SEC acknowledges the potential difficulties of reporting Scope 3 emissions (as opposed to Scopes 1 and 2 emissions).[26] To counter those concerns, the Proposed Rule provides a safe harbor for Scope 3 emissions disclosures, an exemption from Scope 3 emissions disclosures for smaller reporting companies and a delayed compliance date for Scope 3 emissions disclosures. Under the safe harbor provision, a Scope 3 emissions disclosure will be deemed not to

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[24] *Id*. (specifically stating, "[i]f a registrant determines that its Scope 3 emissions are not material, and therefore not subject to disclosure, it may be useful to investors to understand the basis for that determination. Further, if a registrant determines that certain categories of Scope 3 emissions are material, registrants should consider disclosing why other categories are not material. If, however, Scope 3 emissions are material, then understanding the extent of a registrant's exposure to Scope 3 emissions, and the choices it makes regarding them, will be important for investors when making investment or voting decisions").

[25] *Id*. at 21352.

[26] *See, e.g.*, *Id*. at 21377 (noting that "[u]nlike Scopes 1 and 2 emissions, Scope 3 emissions typically result from the activities of third parties in a registrant's value chain 440 and thus collecting the appropriate data and calculating these emissions will potentially be more difficult than for Scopes 1 and 2 emissions").

be a fraudulent statement unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith. [27]

While the safe harbor for Scope 3 emissions disclosures will reduce a company's risk of potential litigation and ultimate liability for misstatements, it does not go far enough to eliminate that risk—even for companies that have invested significant time, effort and resources to make their disclosures accurate and complete. A safe harbor based upon a reasonable basis or a good faith standard creates fact-based inquiries unlikely to be resolved early in litigation through motions practice. Nor does it pose a significant deterrent to plaintiffs' lawyers to file meritless lawsuit. This is because disputes inevitably arise with regard to whether a registrant's basis for its disclosure decisions was, in fact, "reasonable." For example, how is a company to determine which particular climate model or set of estimates constitutes a "reasonable basis" when different models and estimations lead to substantially different results? All of this will encourage a cottage industry of plaintiffs' lawyers to file nuisance cases against registrants, leaving shareholders to cover increased litigation costs, insurance premiums, and the ultimate distraction from the company's enterprise mission.

In addition, what standard will be used to determine whether a statement that was made with a reasonable basis was made "other than in good faith?" Is it bad faith if a registrant receives significantly different numbers from two suppliers that appear to use similar processes for producing and transporting raw materials and one chooses to use the numbers that produce the lowest Scope 3 emissions? Essentially, the proposed safe harbor for Scope 3 emissions disclosures does little beyond defining the standard necessary to establish scienter for fraud-based claims. The narrow scope of the safe harbor for Scope 3 emissions disclosures will do nothing to reassure companies about relying upon third-party data for their emissions estimates and disclosures, nor will it encourage the spirit of the Proposed Rule to provide more robust Scope 3 emissions information.

In addition to our concern that the safe harbor for Scope 3 emissions disclosures is too limited, the Proposed Rule provides no additional liability protections for Scopes 1 and 2 emissions disclosures than what is already provided under the existing general statutory safe harbor under the Private Securities Litigation Reform Act ("PSLRA"). The liability protections provided under the PSLRA are insufficient to protect Scopes 1 and 2 disclosures because those protections only apply (i) to forward-looking statements and not all climate-related disclosures and (ii) to private causes of action and not SEC enforcement actions. Given the inherent uncertainties in Scopes 1 and 2 emissions disclosures, the widely acknowledged challenges to data collection, and the evolving methodologies and assumptions calculating climate information, it will be inequitable and counterproductive to expose companies to SEC enforcement action and private causes of action based upon Scopes 1 and 2 emissions disclosures or any climate-related disclosure.

Accordingly, if the Proposed Rule is implemented, the SEC should adopt and include a uniform and stronger safe harbor based on the following principles:

1. The safe harbor should apply to all Scopes 1, 2 and 3 emissions disclosures and should be available to registrants unless a registrant had actual knowledge that their Scope 1, 2, or 3 emissions reporting was false or misleading.

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[27] *Id.* at 21391 (citing proposed 17 C.F.R. 229.1504(f)(1)).

2. The safe harbor should apply to all projections and forward-looking statements made in response to any new climate-risk disclosure rule the SEC adopts;

3. The safe harbor should apply to information in any document required to be filed with the SEC, including registration statements, periodic reports, and proxy statements;

4. The safe harbor should apply in SEC enforcement cases and private causes of action; and

5. False or misleading forward-looking information disclosed in response to any new climate-risk disclosure rule the SEC adopts should not be actionable if it was accompanied by meaningful cautionary statements about the risk that the forward-looking information could be incorrect or if the company making the statement did not have actual knowledge that the statement was false or misleading instead of the good-faith standard.

B. "Furnished" not "filed"

The Proposed Rule will treat all climate-related disclosures as "filed" rather than "furnished" (other than those included in a foreign private issuer's Form 6-K, which generally are "furnished"). This means that, in addition to general anti-fraud liability under the SEC's Rule 10b-5 under the Exchange Act, such disclosures will be subject to incremental liability under Section 18 of the Exchange Act and, to the extent such disclosures are included or incorporated by reference into Securities Act Registration Statements, subject to liability under Sections 11 and 12 of the Securities Act. Importantly, claims under Section 11 of the Securities Act and Section 18 of the Exchange Act do not require a plaintiff to prove scienter or negligence, in contrast to claims under Rule 10b-5.[28]

The SEC should revise the requirement that disclosures be deemed "furnished" with the SEC. Companies who voluntarily disclose climate-related information through stand-alone sustainability and climate reports already do so with an existing obligation not to make materially misleading statements. In addition, to the extent climate-related information is material (as traditionally defined and understood) to a registrant's business, current SEC rules already require such information to be disclosed in such registrant's Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, which are deemed "filed." On a number of prior occasions, the SEC has provided helpful guidance on how its requirements relating to the disclosure of material information should be interpreted in the context of climate change effects. Therefore, there is no practical justification to subject climate-related disclosures to additional legal liability.

Further, the additional liability exposure that the Proposed Rule will create could ironically undermine registrants' sustainability efforts and disclosures. Under the Proposed Rule, a company must "disclos[e] . . . if it has set any targets or goals related to the reduction of GHG emissions."[29] If it has, new requirements will apply, and the SEC will require the company to disclose information on scope, units of measurement, and a defined time horizon of the goal target. Climate change goals will now be a matter of liability to investors and potential SEC investigations if such goals are not met. Aspirational goals will be eliminated or become less lofty in practice. Registrants may avoid

[28] 15 U.S.C. § 77k; 17 C.F.R. § 240.10b5-1.
[29] Proposed Rule, at 21405.

such statements altogether, ironically curtailing companies' efforts to promote a culture of emissions reductions.

IV. The Proposed Rule is unnecessary and will interfere with an effective voluntary disclosure regime.

As set forth above, approximately 92 percent of issuers on the S&P 500 participate in some form of voluntary ESG disclosures. Notably, a number of companies also publish stand-alone sustainability and climate reports. In fact, sustainability, climate, and other voluntary reports are used by companies to communicate with a variety of stakeholders in addition to investors. Many of the climate-related disclosures that companies make are the direct result of meetings between investors and companies. Investors and shareholders have many tools at their disposal to achieve more consistent and credible ESG information, including climate disclosures directly from companies, and these market-based solutions are better than regulatory solutions. Investors can submit precatory proposals under Rule 14a-8 or initiate informal engagement with companies to prompt disclosures. They can use similar techniques to encourage integrated climate-disclosure reporting in SEC filings they deem important. In turn, companies have demonstrated flexibility and adaptability that have allowed them to respond effectively to market and other external interest in climate information, which can vary significantly by industry, company, business model, geography, and customer and investor bases.

Companies are in the best position to evaluate and determine the additional climate information they should provide, if any, based on the interests of industry and individual investors and other stakeholders. In practice, voluntary reporting allows companies to be flexible in reporting the information it and its investors have deemed relevant without overwhelming investors with information that is not useful when it comes to understanding that company. This voluntary approach has allowed climate-related reporting to evolve over time and is far superior, in our view, to standardized reporting for registrants.

Climate-related information that might have been expected of a company in the past may not be the same information that is expected of a company today. Likewise, climate-related information that is of interest to investors today may not be the same information that investors and stakeholders may find informative in the future. Further, climate-related information that may be relevant to evaluating one company often times is not informative when evaluating another company, and in fact could be confusing or misleading if required to be reported by companies for which that information is not material.[30]

The Proposed Rule fails to properly account for the variability of investor interest and issuer practices across industries and companies. In many situations, the Proposed Rule's prescriptive mandates will not allow for specific company-related disclosures or for appropriate responses to changes in facts, circumstances, risks, and other developments. In fact, the Proposed Rule is

[30] For instance, disclosure mechanisms for identifying what climate-related information are material for financial companies differs from the approach other industries, like the energy and electric power sectors, have employed. These industry-focused reporting practices have provided precision in the ability of companies to disclose information sought after by interested shareholders and investors. In fact, climate-related information is not material, as that term has historically been understood, to many industries and companies.

excessively prescriptive and not principles-based. The understanding of the magnitude and impacts of climate change will evolve, and companies will adapt and transition. New technologies will emerge. In turn, the disclosure process must evolve, and will require collaboration between investors, shareholders, and companies to refine and define what works best, and not a rigid standardized disclosure system. The breadth of these issues emphasizes the importance of flexible, voluntary disclosures designed to elicit useful information on a company and industry-specific basis. We believe that the prescriptive set of disclosures mandated in the Proposed Rule is likely to result in a disclosure system that does not provide investors with relevant information related to climate disclosures that impact investment decisions and could inundate investors with disclosures that are not truly material.

V. The Proposed Rule unduly interferes with business management decisions and corporate governance.

The new disclosures required by the Proposed Rule interfere with business management decisions, and using disclosure rules to influence corporate behavior blurs the line between the domains of federal securities and state corporate law.[31] Risk management for companies is the responsibility of the company's board, through officers and management, under state law. The Proposed Rule will dictate what climate-related disclosures companies must make and, indirectly, its decision-making process in risk assessment for climate issues and disclosure. The Proposed Rule will require disclosure of whether and how a board of directors and management discuss and manage climate-change risks. It will require disclosure of any processes a company has for assessing and managing climate-related risks. It will require disclosure of the way a company has integrated climate-change risks into its business strategy.

The Proposed Rule is cast in terms of disclosure requirements, but the required disclosures will, as a practical matter, have a profound effect on the actual operations of registrants. If the Proposed Rule is implemented, climate-change considerations can be expected to have a significantly greater impact on corporate governance and behavior, and on business operations, than many boards of directors and management, exercising their business judgment in accordance with state law duties, previously have determined should be the case. It appears to us, and many commentators have observed, that this appears to be both the purpose and the result of the Proposed Rule.[32] The gravitational pull exerted by the extensive requirements set forth in the Proposed Rule will distort and interfere with the best judgment of the board and management on how to structure their decision-making and internal processes and how to achieve returns for investors. It therefore will be a new, large incursion of federal law into state corporate law and the freedom of companies to make their own decisions in a way that maximizes shareholder value in these areas.

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[31] James J. Park, *Reassessing the Distinction Between Corporate and Securities Law*, 64 UCLA L. Rev. 116, 118 (2017).

[32] The SEC has hinted as such, deep within the proposal. *See* Proposed Rule, at 21447-48 ("Registrants may respond [to the proposed disclosures] by taking measures to minimize negative impacts … [registrants] may seek to decrease GHG emissions."); *cf. id*. at 21336 ("While climate-related risks implicate broader concerns—and are subject to various other regulatory schemes—our objective is to protect investors, maintain fair, orderly and efficient markets, and promote capital formation, not to address climate-related issues more generally.")

Moreover, this intrusion by the SEC is not necessary. Each company is already subject to very powerful incentives to study and effectively manage the effects of climate-change. By requiring companies to disclose whether they have an expert in climate change on their board of directors, the Proposed Rule will cause registrants to consider placing an expert that may not otherwise be necessary or advantageous from a business or operational perspective on their board of directors in order to avoid public scrutiny or baseless class action lawsuits. The same is true with the frequency of meetings to discuss climate issues and the process by which employees become educated on climate risks. The Proposed Rule will encourage companies, even those that may be subject to minimal or tangential climate impact, to spend resources and management time on issues that it will otherwise not make, resulting in a loss of productivity and resources, which ultimately will be detrimental to shareholders.

VI. Attestation is costly and is not based on a standard framework.

The Proposed Rule will require accelerated filers and large accelerated filers to include an attestation report covering, at a minimum, the disclosure of its Scopes 1 and 2 emissions and to provide certain related disclosures about the attestation service provider. Schneider has serious concerns about the efficacy and implementation of this requirement. An audit attestation requirement is unduly burdensome and costly given the breadth of disclosures covered by the attestation. The attestation required by the Proposed Rule will undoubtedly require evaluating vast amounts of data, including third-party data, uncertain predictive forecasts and judgments, which inherently cannot be verified.

Monetary cost, however, is not the only impediment. An audit for Scopes 1 and 2 emissions is not straightforward such as a financial audit, which is based on concrete data. The Proposed Rule lacks any standards for the attestation. The Proposed Rule does not set out a framework for the sort of information that must be reviewed, how far down the Scopes 1 and 2 analyses must be audited, what information can be reasonably relied upon, and what information must be independently verified. The consequence of this vagueness is that companies will either be required to write these third-party attestation authorities a blank check to repeat the analysis that has already informed their Scopes 1 and 2 emissions, at any cost, or risk being held responsible – legally or otherwise – for any deficiencies in the attestation. This in turn will lead to other exogenous and endogenous increases in cost including increased liability and indemnification obligations, increased insurance premiums, and employee time diverted away from enterprise-level productivity. Accordingly, the Proposed Rule does not create a comprehensive enough framework in which attestation can accurately be provided.

If attestation is ultimately required, the SEC should designate a climate disclosure standard board whose primary purpose is to establish standards (including appropriate guidance) for the reporting as to which attestation is required, through a transparent and inclusive process, like the FASB, for GAAP. This will enable companies to provide useful information to investors and others who desire or use such information. Third-party standard setters can better develop a broad range of metrics and craft a framework of quantitative and qualitative disclosures for companies to follow. Frameworks provide principles-based guidance that helps companies identify what climate disclosures to cover and determine how to structure and prepare the climate information they disclose. Further, uniform standards provide specific and detailed requirements that may assist companies in determining what specific metrics to disclose for each topic. In order for an assurance engagement to be meaningful, criteria must be clear enough, and companies must be working from the same taxonomy. Without having a framework of standards, attestation will be impossible because there will be no uniform standards in which to measure and determine if Scopes 1 and 2 emissions disclosures are compliant.

Such a harmonized framework will have a number of benefits. First, the development of universally understood and calculated measures for Scopes 1 and 2 emissions disclosures will allow auditors to attest to the accuracy of those disclosures more easily and accurately. In turn, it will enhance attestation of the climate disclosures made by separate companies, providing investors the ability to make better informed investment decisions, and conserve companies' resources in developing climate disclosures and reporting. Ultimately, this will assist the SEC's goal of having meaningful climate disclosures.

VII. Implementing the Proposed Rule at this time will have a severe adverse impact on America's supply chain.

The timing of this Proposed Rule could not be worse. At a time where the global economy is hamstrung by supply chain constraints, including higher prices, inflation, and a lack of reliable transport networks, the Proposed Rule will only exacerbate these issues. The SEC should pause and consider the drastic impact this Rule will have on the American economy. This is not a philosophical or academic exercise, but instead, implementing the Proposed Rule could have real, severe adverse consequences on America's supply chain.

We fear that if implemented as written, the Proposed Rule will result in unintended, harmful consequences. Specifically, companies in the logistics industry may materially alter or limit certain operations which are most affected by the Scope 3 GHG disclosure requirement. As detailed above, the Scope 3 disclosure will be particularly challenging to capture for an industry that leases its equipment to third parties, or in some contexts, arranges for freight to be transported by third parties entirely using their own equipment and their own transportation routes. As a result, the Proposed Rule may further exacerbate or extend the current crisis with snarled supply chains.

VIII. The cost-benefit analysis is unfavorable.

The SEC declares, "[t]he primary benefit of the proposed rules is that investors will have access to more comparable, consistent, and reliable disclosures with respect to registrants' climate-related risks." Putting aside the question of which investors' needs are being met and the numerous reasons discussed as to why the Proposed Rule will not result in comparable, consistent, or reliable disclosures, the SEC does not attempt to quantify that benefit.

On the flip side, although its estimates are likely low, because few, if any, registrants are currently providing the exhaustingly prescriptive disclosures that are proposed, there are stunning costs associated with implementing and complying with the Proposed Rule. Although the SEC has identified some categories of significant costs, there are surely others that have been left out. Take, for example, the challenges of calculating Scope 3 emissions impacts for Schneider's logistics services segment discussed above. Recall that 97.4% of for-hire motor carriers – the motor carriers that Schneider's logistics segment contracts with to transport freight for Schneider customers –

operate fewer than 20 trucks. Yet the SEC estimates that only 1,004 registrants that are small entities will be affected by the Proposed Rule.[33] For that to be true, Schneider will either (i) have to calculate those small carrier's emissions for them in order to be calculate its indirect Scope 3 emissions; or (ii) have to stop using 97.4% of the for-hire motor carriers in the market. Neither scenario is realistic. The fact is that a far greater number of small entities, by an order of magnitude, will be affected by the Proposed Rule, because they will be required by affected registrants to account for and report their emissions.

A. Potential legal challenges.

If the Proposed Rule is adopted as a final rule in its current or a substantially similar form, there are likely to be a number of injunctive suits filed to prevent its implementation. The resulting litigation over the import of the Proposed Rule will in turn lead to delay, leading to further market fragmentation in terms of which companies chose to comply and disclose this sort of information and the consistency of those disclosures, which in turn will further increase compliance costs for all public companies. This cannot be the intended result.

If the SEC were to pair-down the Proposed Rule, including its Scope 3 disclosure requirements, this revision will not foreclose the SEC from seeking this information in the future, particularly when information was more accessible and the process for calculating Scope 3 emissions was more attainable, economical, and consistent. Nor – most importantly – will this amendment prevent investors from choosing to invest in companies that are voluntarily releasing this information. If the market is moving in that direction, and investors are seeking that sort of information, the capital markets will ultimately lead us to enhanced disclosure.

Conclusion

Over the course of the last several years, the Executive Branch has worked to bring together shipping companies, port executives, and business leaders to meet the challenges in the supply chain and strategize on solutions. These efforts have, among other things, helped to catalyze a shift to 24/7 operations by California ports and relaxed certain requirements for truck drivers. Progress has and, continues to be made to alleviate supply chain pressure and reduce the frequency of crisis moments. Ill-considered or the untimely imposition of non-critical regulatory burdens, however, can upset the delicate supply-demand balance in critical industries or for life-sustaining products and services. This cannot be the desired outcome of the Proposed Rule.

We respectfully request that the SEC delay implementation of the Proposed Rule until more appropriate principle-based rules can be drafted. The current system of voluntary disclosures based upon shareholder and investor input is effective and of most utility to investors and shareholders in providing the desired climate-related data they seek. Climate change is a global problem that must be addressed, but requiring the climate disclosures set forth in the Proposed Rule will not solve the problem of climate change and, we fear, will only worsen the current supply chain crisis.

Thank you for the opportunity to provide our comments. We welcome the opportunity to further discuss the concerns and recommendations covered in this letter and hope that we can be a

[33] Proposed Rule, at 21462.

resource to the SEC as you review and consider all of the comments. If you have any questions, please do not hesitate to contact me directly at [redacted].

Sincerely,

Thom Jackson

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