Comment on Proposed Rules for Enhancement and Standardization of Climate-Related Disclosures for Investors (File Number S7-10-22)

June 17, 2022

Introduction

Workday is pleased to provide comments in response to the request for public comments by the Securities and Exchange Commission (the "Commission") to the Proposed Rules for Enhancement and Standardization of Climate-Related Disclosures for Investors (the "Proposed Rules").

Workday & Our Climate Commitments

Workday is a leading provider of enterprise cloud applications for finance and human resources, helping our customers adapt and thrive in a changing world. Our applications have been adopted by thousands of organizations in the U.S. and globally—from medium-sized businesses to more than 50 percent of the *Fortune 500*. We are a values-driven company and our core values give us a framework for leadership and daily decisions, including achieving our own sustainability goals as well as how we innovate to enable our customers to meet theirs.

Workday is committed to creating a better future for employees, customers, and the larger global community by playing an active and collaborative role in addressing climate change. We are dedicated to helping the world transition to a net-zero future by 2050 and have set ambitious goals rooted in our core values to help address some of the world's most complex societal and environmental challenges. For example, we have provided our customers with a carbon-neutral cloud since 2017, and in 2020, we reached our goal of achieving net-zero carbon emissions across our offices, data centers, and business travel, a year earlier than we targeted. We also match 100 percent of the electricity used at our offices and owned data centers globally with clean, renewable sources, and in 2021 mitigated our historical emissions by achieving a lifetime net-zero carbon footprint. In addition, we advocate for government policies that aid the transition to a low-carbon economy.

We also set science-based emissions reduction targets across our entire value chain that were recently approved by the Science Based Targets initiative ("SBTi"). These targets are aligned with keeping global warming to 1.5 degrees Celsius across all three scopes of emissions—the most ambitious designation available through the SBTi process. These targets include continuing our commitments to source 100 percent renewable electricity through our fiscal year 2030; reducing absolute Scope 3 business travel emissions by 25 percent by our fiscal year 2026 based on our fiscal 2020 levels (pre-pandemic); and having 70 percent of our suppliers, by spend covering purchased goods and services and capital goods, commit to science-based targets by our fiscal year 2026. Meeting these goals will not be easy, but we're committed to doing our part to address climate change.

Our Support for Climate Disclosure

Beyond our own operations, many Workday customers are also working towards their own emissions reduction goals. We are pleased to provide solutions to help our customers calculate emissions across their value chain so that they can make informed supplier decisions, model the impact of emissions reduction initiatives, and track progress against their goals. We are proud to provide these solutions to extend our support for an economy-wide transition to a more sustainable future.

More specifically, our supplier sustainability solution, which we have announced and will be available later this year, will help customers improve the sustainability and resilience of their supply chains and help enable them to assess their Scope 3 emissions. Using Workday Financial Management, Workday Prism Analytics, and Workday Strategic Sourcing, the new solution will enable the collection of key environmental, social, and governance ("ESG") data from suppliers and the identification of areas for improvement, as well as reporting on Scope 3 emissions from suppliers (*e.g, purchased goods and services and capital goods*). This will help enable the sourcing and tracking of supplier data that can help influence supplier selections toward helping comply with a company's ESG goals.

We believe that government policies play a critical role in mitigating climate change and limiting global warming to 1.5 degrees Celsius. While we support the direction of the Proposed Rules, we write to highlight certain practical challenges of reporting Greenhouse Gas ("GHG") emissions and urge expansion of the safe harbor provision for Scope 3 emissions in particular.

The Proposed Rules require that a company disclose its total Scope 3 emissions if those emissions are material, or if the company has an emissions reduction target or goal that includes its Scope 3 emissions. From our experience providing Scope 3 emissions solutions for our customers, we know that existing methodologies are still evolving. Enhancing the safe harbor protection for Scope 3 disclosures is critical for this important and complex data set that will continue to improve over time.

Given the importance of measuring and reporting Scope 3 emissions to advance progress towards climate goals, the Commission should require Scope 3 disclosures from all companies if coupled with a stronger safe harbor for Scope 3 emissions data as described below. We believe that strengthening the safe harbor will increase transparency and motivate meaningful climate action by reducing concerns of liability for Scope 3 information. We appreciate the opportunity to provide the following ideas for consideration.

Enhancing Safe Harbor Protection

Scope 3 Emissions Reporting is a Complex and Evolving Area

Climate change disclosures are new for the vast majority of publicly traded companies in the U.S. and often require difficult estimates and assumptions. This is particularly true for Scope 3 emissions, which aim to capture emissions from a company's value chain, both upstream (primarily the supply chain) and downstream (primarily impacts from product and service distribution, usage, waste and disposal).[1]

[1] In our current ESG reporting, we disclose our Scope 1 and 2 emissions in alignment with the Greenhouse Gas Protocol. We also have reported our Scope 3 emissions in line with Greenhouse Gas Protocol's Corporate Value Chain (Scope 3) Standard for certain categories.

As Stanford University's Sustainable Finance Initiative notes:

> [*T*]*he Scope 3 emissions data* […] *tends to be high*[*ly*] *inconsistent,* […] *due to various barriers, such as lack of transparency of supply chain, lack of direct connections with various tiers of suppliers, reduced leverage to influence action, and complex accounting principles. Furthermore, the industry standard (i.e., the Greenhouse Gas Protocol) provides so much scope for discretion and ambiguity that the ultimate reporting, if it is there at all, can be inconsistent and misleading…*
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> *Uncertainty in Scope 3 emissions data may arise from multiple avenues, including parameters (e.g., from data on direct emissions, activities, emission factors, and global warming potentials), scenarios (e.g., from methodological choices on allocation methods, product use assumptions, and end-of-life assumptions), and models themselves. All this results in the eventual data being unreliable.*"[2]

The Commission itself has acknowledged some of these difficulties:

> *It may be difficult to obtain activity data from suppliers and other third parties in a registrant's value chain, or to verify the accuracy of that information. It may also be necessary to rely heavily on estimates and assumptions to generate Scope 3 emissions data. For example, registrants may need to rely on assumptions about how customers will use their products in order to calculate Scope 3 emissions from the use of sold products.*[3]

However, while calculating and accurately reporting Scope 3 emissions is challenging, it is nonetheless essential to the effort to make meaningful progress in reducing GHG emissions. Estimates have suggested that a company's Scope 3 emissions can be more than five times their Scopes 1 and 2 emissions, combined.[4] For certain industries, Scope 3 emissions can comprise upwards of 90% of GHG emissions.[5] Tracking and reporting against such data can help inform decisions and advance progress towards climate goals throughout the economy.

Existing Methodologies Require Further Development

Some commentators, including former Commissioner Lee, have suggested that requiring specific methodologies such as the Partnership for Carbon Accounting Financials ("PCAF") Standard if the company is a financial institution, or the Greenhouse Gas Protocol ("GHG Protocol") Scope 3 Accounting and Reporting Standard for other types of companies, could help ensure that accurate, reliable and comparable data is disclosed. These methodologies, however, are still evolving and need substantial improvement.

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[2] Gireesh Shrimali, *Measuring and Managing Scope 3 Emissions*, Stan. Sustainable Fin. Initiative (Apr. 2021), http://energy.stanford.edu/sites/g/files/sbiybj9971/f/measuring_and_managing_scope_3_emissions_-_executive_summary_0.pdf.

[3] Proposed Rule, at 208-209.

[4] *Climate Action in the Value Chain: Reducing Scope 3 Emissions and Achieving Science-Based Targets*, BSR (Apr. 2, 2020), https://www.bsr.org/en/our-insights/report-view/scope-3-emissions-science-based-targets-climate-action-value-chain.

[5] Proposed Rule, at 155.

There are two primary methods for calculating Scope 3 emissions data, both of which are allowed under the GHG Protocol and PCAF. The first is the use of input-output ("IO") models, which start with sector- or economy-wide emissions calculations and provide an estimate of individual corporate emissions as a function of their market share, based on independent estimates of emissions associated with relevant economic activities provided by organizations like the Environmental Protection Agency ("EPA").[6] The second is a process analysis, which uses highly specific, product-level detail to estimate emissions for a company's specific products and manufacturing processes, based on the material and energy inputs needed to make, distribute, use and dispose of the product. Companies using these methodologies may choose between them or combine aspects of both, with results potentially varying widely due to fundamental differences in the methodologies (including which specific IO database is used to estimate emissions or the boundary of a product lifecycle captured in a process analysis) and a lack of standardization as to when companies can and should use either approach.[7]

There are also disadvantages associated with each method. For instance, IO models typically measure emissions per unit of revenue, meaning that they may not distinguish between companies which have different production processes in place for the same type of product. This method, in particular, does not give companies credit for the process improvements that Scope 3 emissions reporting is designed to highlight. A product level process analysis, which can be more accurate than an IO model, may be prohibitively expensive, especially where companies have many different products. In addition, under both methodologies, companies often need to collect information from entities across the value chain, in many cases, private companies without a record of GHG reporting. Companies operating internationally may have to reconcile data coming from jurisdictions with historically different reporting standards. And data purchased from third parties is often inconsistent—Scope 3 emissions estimates from the six largest commercial providers are not significantly correlated.[8]

The GHG Protocol itself recognizes that there are significant levels of uncertainty in the GHG Protocol's Corporate Value Chain (Scope 3) Standard, including parameter uncertainty, scenario uncertainty, and model uncertainty. Parameter uncertainty is "*uncertainty regarding whether a value used in the inventory accurately represents the activity in the company's value chain*,"[9] (i.e., a company may have an estimate of CO2 emissions based on limited sampling of producers from an older timeframe or different geography than what is currently in use).

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6 We are currently calculating our own Scope 3 emissions, using a combination of spend data and economic IO tables from the EPA Supply Chain Greenhouse Gas Emission Factors for US Industries and Commodities (2020).

7 Elizabeth Stanny, *Reliability and Comparability of GHG Disclosures to the CDP by US Electric Utilities*, 38 J. Soc. & Envtl. Accountability J. 111, 111-30 (Apr. 2, 2018), available at https://doi.org/10.1080/0969160X.2018.1456949; Jane Andrew & Corinne L. Corese, *Carbon Disclosures: Comparability, the Carbon Disclosure Project and the Greenhouse Gas Protocol*, 5 Australasian Acct. Bus. & Fin. J. 5, 5-18 (2011), available at https://ro.uow.edu.au/cgi/viewcontent.cgi?article=1245&context=aabfj.

8 Timo Busch, Matthew Johnson & Thomas Pioch, *Corporate carbon performance data: Quo vadis?*, 26 J. Indus. Ecology 350, 350-363 (Apr. 24, 2022), available at https://doi.org/10.1111/jiec.13008.

9 Greenhouse Gas Protocol, *Corporate Value Chain (Scope 3) Accounting and Reporting Standard,* World Resources Inst. & World Bus. Council Sustainable Development (Sept. 2011), available at https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf.

Scenario uncertainty refers to "*variation in calculated emissions due to methodological choices*", including uncertainty which may relate to the use of a particular IO model or assumptions about product life use.[10] Model uncertainty is the result of limitations in the ability to model real world practices (i.e., a company may have an estimate of transport emissions based on assumed fuel efficiency and levels of traffic, but the model cannot perfectly predict the true transport logistics meaning there is uncertainty from the use of the model itself).[11]

Consequently, we believe Scope 3 calculations should continue to evolve across industries in order to (1) allow for the disclosure of accurate and comparable data and (2) reduce the significant levels of uncertainty currently present in Scope 3 emissions reporting.

Notwithstanding the different approaches and challenges to the Scope 3 methodology, the inclusion of this metric among reporting requirements is also currently subject to consultation in other jurisdictions and at an international level. For example, both the European Financial Reporting Advisory Group ("EFRAG"), responsible for developing draft European sustainable reporting standards, as well as the International Sustainability Standards Board ("ISSB"), who is trying to develop a global baseline standard, are including Scope 3 reporting requirements in their standards. As currently proposed, both the proposed EFRAG climate-related disclosure rule and the draft ISSB climate-related standard would incorporate the GHG Protocol's Scope 3 Standard, and we welcome the international alignment on Scope 3 reporting.

Given the global footprint of many American companies, including Workday, the above draft requirements are likely to become mandatory for at least parts of their foreign operations. Similarly, many Workday customers headquartered outside the U.S. will be required to account for their environmental footprint according to global and local standards. We encourage the Commission to take a prominent role in international cooperation and the development of standards that could provide mutual benefit in enhancing transparency around a company's impact on climate change. These standards, including on Scope 3 GHG emissions, should involve, well established and accepted reporting methodologies yielding comparable and decision-useful data.

Rapid Innovation to Support Scope 3 Emissions Reporting is Necessary

To help our customers meet their own climate goals, Workday is developing solutions that help enable our customers to better track their Scope 3 emissions. Workday customers may already make use of Accelerate2zero—developed by Deloitte and built on Workday Adaptive Planning—which enables organizations to inventory and plan reduction strategies for Scope 1 and Scope 2 emissions, as well as Scope 3 emissions in certain categories according to the Scope 3 Standard, such as business travel, transportation, distribution and lifecycle emissions of sold products. In addition, as previously mentioned, Workday is building a supplier sustainability solution which will be released later this year enabling the collection of key ESG data from suppliers and helping to enable more sustainable procurement decisions.

In order for a Scope 3 emissions solution to be successful, our customers need accurate and reliable data, and they need consistent standards for how that data is used and reported. While we work to help ensure the reliability and accuracy of the data we provide to customers, the accuracy and utility of our climate-related reporting products depends also on third party data, such as the EPA's U.S. Environmentally-Extended Input-Output ("IO") Models. As noted above,

[10] Id.

[11] Id.

however, there are multiple sources of IO data to choose from, and each ultimately works only with certain averages, which are likely inaccurate for any given company, and do not give companies credit for their individual progress.

We are working on additional solutions to this challenge, including direct data collection from our customers' suppliers. In the longer term, methods such as the application of machine learning models may be able to help make data more available and reliable by helping identify outliers or instances of greenwashing in the supply chain, or filling in missing information more accurately. Like other areas in which technology evolves to meet new regulatory requirements, additional data from the market and more time to innovate to craft these solutions will help ensure consistency with market practices and likely compliance as well. Without offering a meaningful safe harbor for Scope 3 emissions, the Commission risks suppressing companies' willingness to report this data and adopt innovative approaches—in turn risking the ultimate availability, accuracy, reliability, and comparability of Scope 3 emissions disclosures which can lead to meaningful action supporting climate goals.

To Allow for Needed Innovation, the Commission Should Enhance the Proposed Safe Harbor for Scope 3 Emissions

While the Proposed Rules include a safe harbor for Scope 3 disclosures (the "Proposed Scope 3 Safe Harbor"), we urge the Commission to allow for a greater scope of exemption from liability for companies without undermining the interests of shareholders.

As currently drafted, the Proposed Scope 3 Safe Harbor provides that disclosure of Scope 3 emissions by or on behalf of the company will not be deemed 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. The Proposed Scope 3 Safe Harbor is narrower, however, than the other safe harbors currently available under the federal securities laws, such as the broad safe harbor available for forward-looking statements under the Private Securities Litigation Reform Act (PSLRA Safe Harbor). The PSLRA Safe Harbor provides an exemption to liability for any forward-looking statement in primarily three situations: where such a statement (1) is identified by the company as a forward-looking statement and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement, (2) has not been shown to be false or misleading, or (3) is immaterial.

While the PSLRA Safe Harbor is very broad, it was deliberately crafted in that way to encourage companies to share their forecasts with investors. Prior to the enactment of the PSLRA Safe Harbor, the Commission had expressly prohibited the inclusion of forward-looking information in filings in an effort to prevent securities fraud.[12] However, in response to investor demand, the Commission began to encourage companies to share their forecasts for investors' benefit, culminating with Congress's enactment of the PSLRA Safe Harbor, which is now used almost universally by companies to provide meaningful information to their investors without fear of undue liability. The PLSRA's breadth was by design, as Congress wished "to enhance market efficiency by encouraging companies to disclose forward looking information" and "to make more information about a company's future plans available to investors and public."[13] Congress

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[12] Amanda M. Rose, *SPAC Mergers, IPOs, and the PSLRA's Safe Harbor: Unpacking Claims of Regulatory Arbitrage* (May 19, 2021), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3945975.

[13] H.R. Conf. Rep. No. 104-369 (1995), reprinted in 1995 U.S.C.C.A.N. 679, 742.

was concerned that, previously, without this safe harbor, "[f]ear that inaccurate projections will trigger the filing of securities class action lawsuits has muzzled corporate management."[14]

We believe that the public policy considerations served by increased and uniform disclosures regarding climate change initiatives are just as compelling as those present for forward-looking statements, and that the investor community will be best served by an environment in which companies feel safe to make disclosures regarding their Scope 3 emissions without fear of undue liability given the current difficulties with finding accurate and reliable data. We do not believe that the Proposed Scope 3 Safe Harbor, which requires an inquiry into whether the issuer had a "reasonable basis" or otherwise acted in "good faith," is sufficiently protective. In an environment where different suppliers, models, and estimations can lead to drastically different results, companies will be concerned that actions alleging that they did not have a reasonable basis for the methods they chose will be complicated to defend against, causing unnecessary expense and business disruption, and leading to unfair outcomes.

We therefore propose a safe harbor for Scope 3 emissions disclosures that mirrors the PSLRA Safe Harbor. Specifically, we propose that, for any statement regarding Scope 3 emissions that is disclosed pursuant to §§ 229.1500 through 229.1506 of the Proposed Rules, that statement should not be deemed fraudulent (under the meaning presented in Proposed Rule §229.1504(f)(3)) if:

1. a company accompanies that disclosure with meaningful cautionary statements identifying important factors that could cause actual Scope 3 emissions to differ materially from the Scope 3 emissions data reported;
2. it is not established by the plaintiff that the statement made by the company or a representative of the company is false or misleading; and
3. it is immaterial.

We believe that adopting a broad Scope 3 safe harbor would help contribute to the development of more accurate, reliable, and comparable Scope 3 emissions data in a shorter period of time, as well as encourage companies to report on Scope 3 emissions and adopt Scope 3 targets. The Scope 3 safe harbor in the Proposed Rules would apply equally to private litigation and regulatory actions, and we would encourage the Commission to apply this broader safe harbor to the same scope of actions. At a minimum, however, we believe the expanded safe harbor should cover private litigation claims, given the substantial potential for unproductive litigation in this difficult and evolving area.

As Written, the Proposed Rules Would Discourage Climate Action

As written, we believe the Proposed Rules may discourage companies from reporting Scope 3 emissions, chilling the robust climate ambitions currently underway in the business community and slowing the availability of important economy-wide emissions data. The Proposed Rules require disclosure of Scope 3 emissions to the extent that such emissions are deemed to be material as well as the methodology for calculating such emissions. Given the challenges of calculating Scope 3 emissions, and the potential liability for errors, under the Proposed Scope 3 Safe Harbor, companies who are unsure about whether the Commission would consider their Scope 3 emissions to be "material" may determine that the safer course is to conclude that they are not, so that they do not need to be disclosed. Companies who are voluntarily reporting their emissions today, even though they are not material, may also change this practice to avoid liability.

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[14] Id.

The Proposed Rules also require disclosure of Scope 3 emissions if a company had previously set a GHG emissions reduction target or goal that included its Scope 3 emissions, irrespective of materiality. Under the Proposed Scope 3 Safe Harbor, companies may be more reluctant to set reduction targets or goals regarding their Scope 3 emissions if they may be subject to liability for their Scope 3 emissions reporting and may even choose to walk back climate goals they had previously set.

In addition, new Scope 3 emissions data collection processes need to be developed and implemented at scale to address the significant gaps in existing approaches. This includes the development and application of smart sensors and other "*internet of things*" technologies across production and delivery networks, enterprise data analytics solutions to turn existing data streams into emissions estimates, the use of AI tools to automate Scope 3 accounting exercises, and applications of blockchain technologies to trace emissions across the value chain and avoid double counting. However, under the Proposed Scope 3 Safe Harbor, companies may be reluctant to be an early adopter of an innovative approach, due to the concern about the increased difficulty of establishing that such approach was a reasonable one to take.

Conclusion

Corporate approaches to addressing climate change are more pressing than ever. We appreciate the Commission's focus on increasing transparency to provide decision-useful information to investors while advancing key ESG principles. We believe that companies play an important role in decarbonizing the economy and increasing the information available is critical to taking action. Reducing liability risk by expanding the safe harbor for challenging sets of data, Scope 3 emissions in particular, will encourage disclosures and support innovation to further improve access to actionable insights to address climate change. We are grateful for the opportunity to provide you with our comments, and we appreciate your consideration of these recommendations. Please do not hesitate to reach out to Chandler Morse at [redacted] with questions or to discuss further.