June 17, 2021

Via email
rule-comments@sec.gov

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Comments on Proposed Rule - The Enhancement and Standardization of Climate-Related Disclosures for Investors - File Number S7-10-22

Dear Ms. Countryman:

The Long-Term Stock Exchange, Inc. (Exchange) and its affiliate, LTSE Services, Inc., offer their support for proposed rule requiring additional climate-related disclosure by public companies entitled "*The Enhancement and Standardization of Climate-Related Disclosures for Investors.*"[1] We believe that climate risk is a significant issue confronting modern society. It also represents an investment risk, and investors deserve to understand what public companies are doing to address this issue. Although we believe the proposal represents a significant step toward standardizing, clarifying and verifying disclosures so as to enable investors to make more informed investment decisions, we would like to offer some alternatives and suggestions for the Securities and Exchange Commission (SEC) to consider in formulating the final rule. While preparing our recommendations with respect to this important rule making, we also surveyed the community of companies that we work with and considered their viewpoints on the proposed changes.

[1] *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Securities Exchange Act Release No. 94478 (March 21, 2022), 87 FR 21334 (April 11, 2022) [hereinafter "SEC Climate Disclosures Proposal"].

The Exchange is an SEC-registered national securities exchange with a mission to serve companies and investors who share a long-term vision. LTSE Services, Inc. is a data, analytics and advisory driven capital markets platform specifically designed for public companies and private companies planning to enter the public markets. We strive to help create a more sustainable world by encouraging public companies that join the LTSE ecosystem to integrate sustainability into long-term business models whose purpose is to generate significant long-term value for all of their respective stakeholders. In our view, the Environmental, Social and Governance (ESG) analysis is crucial for both companies and investors in understanding the risks and opportunities associated with the transition towards a more sustainable economy.

We believe that ESG analysis starts with a company identifying a set of unique stakeholders and assessing the critical roles of such stakeholders and how the company impacts such stakeholders. In this regard, our affiliate, the Long-Term Stock Exchange, Inc., introduced principles-based listing standards that require listed companies to adopt five policies to address their long-term, multi-stakeholder strategy. One of these policies, the Long-Term Stakeholder Policy, represents the strategic, long-term vision of a company, and requires a company to explain how it operates its business to consider all of the stakeholders critical to its long-term success. This policy is guided by the principle that long-term focused companies should consider a broader group of stakeholders and the critical role they play in one another's success, as well as address the interaction between the company and such stakeholders. With this in mind, we believe that long-term companies should strive to measure the impact on all stakeholders when they are working to address sustainability related issues. We encourage the SEC to use its regulation to focus public companies on how climate-related actions impact all stakeholders and not just investors.

Underlying this principles-based approach, is an understanding that public companies consider those sustainability issues, including those related to the environment, that are material to their businesses. In doing so, companies are able to identify specific risks and opportunities, and in turn, enhance their operating model by integrating relevant aspects of sustainability into their long-term business strategy. This approach enables companies to adopt a holistic view and make fully-informed, long-term decisions with respect to all sustainability issues, including climate-related issues, for the benefit of all of their stakeholders.

Focus on Disclosure Is Likely to Shift Public Companies' Focus from Sustainability to Disclosure Efforts

We understand that the jurisdiction and purview of the SEC rests upon the protection of investors. However, we want to raise a concern that the vast scope of this proposal may encourage myopic climate reform by requiring companies to deploy time, attention and resources toward assessing climate risk and drafting disclosure solely through a public investor's lens. We believe that this proposal may inadvertently assume that materiality framed through a reasonable investor framework represents a sufficient proxy to support climate reforms for all impacted stakeholders.

We support additional clear, standard and verifiable disclosure regarding *material* climate-related risks and opportunities but believe that focusing this climate-related regulation *only* on enhancing the informed investment decisions of investors is an ineffective way to address the climate crisis or encourage businesses to reduce greenhouse gas (GHG) emissions and focus their efforts on more sustainable business practices.

Long-term public companies are at the heart of a sustainable society - they are the innovators, job creators, wealth producers and are also best situated to address some of the world's most pressing problems and issues, including climate change. The lack of effective government action on climate-related issues has incentivized a number of companies to take the initiative in an attempt to address these issues. We applaud their leadership. We also acknowledge that the efforts of some companies have resulted in claims of *greenwashing*.

Public companies are uniquely positioned to tackle sustainability-related issues related to the specific context of their business and operations. Often, companies can have an outsized impact if they have a comparative business advantage. For example, companies with a comparative advantage in logistics were able to help with the distribution of the COVID-19 vaccine across the developed and emerging economies.

Given the costs associated with compliance with this sweeping climate change disclosure proposal, we are concerned that public companies will divert significant resources towards climate disclosure compliance, rather than addressing systemic sustainability issues in areas where they have a comparative business advantage and can effectively make strides to shift the economy towards a more sustainable future. If the SEC decides to move forward with all aspects of this disclosure initiative, we fear that it will have a negative impact on the achievement of broad sustainable economic growth in our society. We ask the SEC to consider this concern in formulating the final rules so as not to dissuade focus from the integration of those aspects of climate reform that are contextually relevant to each company's potential impact.

Additional Climate-Related Disclosure

The SEC's proposed rule, which adds a new subpart to Regulation S-K, would require each public company to disclose certain climate-related information, including detailed disclosures about climate-related risks (and, if applicable, climate-related opportunities) that are reasonably likely to have a material impact on the company, including on its business or consolidated financial statements. Under existing securities law requirements, a public company is currently required to disclose "material" risks, including those related to climate and its impact on such company's business, operations and financial condition. As a result, this new disclosure requirement appears to expand existing disclosure requirements.

We believe that there is a benefit in standardizing these disclosures so that public companies report on climate risks and opportunities in a consistent manner; however, in lieu of the expansive requirements in the existing proposal, the SEC could provide more extensive

guidance regarding the level and content of principles-based disclosure regarding *material* climate-related risks and opportunities that would be sufficient to standardize disclosures and allow investors to make informed investment decisions. The proposed rules require a level of specificity with respect to disclosures related to climate-related matters that are not required to be disclosed by public companies with respect to other risks. Although we don't disagree that more granular and consistent information regarding *material* climate-related risks could allow a better understanding of how a company identifies, evaluates, and addresses these risks, the same is true with respect to other risks that materially impact a company's business, yet the SEC has historically chosen not to require this level of detailed disclosure and has relied on the general *materiality* concept, Staff guidance and comments on SEC filings to promote appropriate disclosures regarding risks.

We also ask the SEC to encourage companies to disclose how they impact other stakeholders in the company's ecosystem, like employees, customers and communities they serve, in addition to investors.

Disclosures Regarding Climate-Related Goals and Targets

To the extent that a company has set any targets or goals related to the reduction of GHG emissions, or any other climate-related target or goal, additional disclosure is required under the proposal related to, among other things, the scope of activities and emissions included in the target, the time frame by which the target is intended to be achieved, and any interim targets; information regarding how the company intends to meet its climate-related targets or goals; and certain data regarding whether the company is making progress toward meeting the target or goal and how such progress has been achieved, with updates each fiscal year.

If a company that is making voluntary disclosures regarding emission targets or achieving net zero emissions is subjected to additional disclosure requirements, this type of requirement could have a chilling effect on companies contemplating making such pledges in the future which is contrary to the underlying goal of reducing GHG emissions. Since addressing climate-related risks rests on encouraging companies to make and achieve effective environmental pledges (e.g., net-zero, net-positive, carbon-neutral), the potential for reducing the number of companies that make such pledges following the effective date of this regulation could be significant. Although we believe that companies should inform all stakeholders regarding climate targets and goals and their progress to achieve such goals, we believe that this requirement should be voluntary and reported in a company's sustainability or ESG reports, rather than in SEC filings.

As currently drafted, the proposed requirement for additional disclosures regarding pledges will address corporate greenwashing pledges and enable investors to make more informed investment decisions, but it does not create an incentive for companies to make a climate pledge or transition to a more sustainable business practices that go beyond reductions in GHG emissions and climate related pledges and disclosures.

We believe the most effective way to accomplish these goals is first through the regulation of allocators of capital, including investment funds, and then through disclosure by public companies. We applaud the SEC's recent proposals related to *Investment Company Names,*[2] and *Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices*.[3] In this regard, we encourage the SEC to proceed with the regulation of investment funds that purport to be "sustainable" and claim to integrate ESG factors into their investment decisions to require such funds to disclose their investment methodology, including, if relevant, carbon budgets and any other measurable sustainability-related targets. As a result, we think the SEC should utilize regulation of funds to emphasize the importance of having sustainable investors, who seek to allocate capital towards companies with broad sustainability objectives. This type of regulation will more effectively address the issues created by the climate change crisis by redistributing capital towards companies that have broad sustainable business practices and help create a just transition that goes beyond climate disclosures to include, among other things, the consideration of structural changes affecting labor markets. In other words, we believe an initial regulatory focus by the SEC should be to elevate the investor framework, which will create better alignment with the broader group of stakeholders impacted by authentic climate reform.

Disclosures Related to Scope 1, 2 and 3 GHG Emissions

Under the terms of the proposed rule, large accelerated filers and accelerated filers are required to obtain an attestation report from an independent attestation service provider covering disclosures related to Scope 1 and Scope 2 GHG emissions. Given that the attestation landscape in this area is still evolving,[4] we believe that the phase-in of this attestation requirement should be extended by a year to permit the establishment of standards related to assurance, as well as Scope 1 and Scope 2 GHG emissions reporting. When effective, we recommend that attestation service providers should be required to be registered with the Public Company Accounting Oversight Board (PCAOB) so that the service providers in this area are subject to the same standards and oversight as accounting firms that audit public companies.

The proposed rule also provides an exemption from the disclosure of Scope 3 GHG emissions for smaller reporting companies (SRCs). The SEC believed that it was important to protect these companies from the "proportionately higher costs they could incur, compared to non-SRCs, to engage in the data gathering, verification, and other actions associated with Scope 3 emissions reporting, many of which may have fixed cost components."[5] This reasoning for excluding SRCs from these requirements also applies to companies that are larger than an SRC and would be confronted with similar costs related to Scope 3 disclosure that exceed the benefits of calculating and reporting on these emissions. As a result, we recommend this exemption be

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[2] *Investment Company Names*, Securities Exchange Act Release No. 94981 (May 25, 2022), 87 FR 36594 (June 17, 2022).

[3] *Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices*, Securities Exchange Act Release No. 94985 (May 25, 2022), 87 FR 36654 (June 17, 2022).

[4] See SEC Climate Disclosures Proposal, supra note 1, at 21395.

[5] Id. at 21391.

extended to cover a slightly broader group of companies with up to $700 million of public float, but would exclude large accelerated filers.

Additions to Regulation S-X

The proposed SEC rule would amend Regulation S-X to require that public companies include additional disclosure in the notes to a company's financial statements regarding, among other matters, the impact of (i) severe weather events and other natural conditions, (ii) any efforts to reduce GHG emissions or otherwise mitigate exposure to transition risks, and (iii) expenses and costs incurred during the to mitigate the risks from severe weather events and other natural conditions, and to reduce GHG emissions or otherwise mitigate exposure to transition risks, on any relevant line items in the company's consolidated financial statements during the fiscal years presented.

Since there are existing appropriate rules governing the preparation of financial statements included in SEC filings, as well as GAAP requirements, we believe that these proposed changes to Regulation S-X are unnecessary. It should be noted that the accounting rule setting authorities, such as the Financial Accounting Standards Board (FASB) and its Staff, have provided guidance regarding what climate-related matters require disclosure in financial statements.[6] We believe that the application of existing GAAP requirements and the materiality standard to climate-related risks and impacts is sufficient to provide the appropriate level of disclosure for the protection of investors. If the SEC believes that there are additional disclosures necessary to standardize the reporting of material climate risks, we believe it is appropriate to provide such disclosures outside of the financial statements in other sections of the periodic reports and registrations statements.

If the proposal is adopted as proposed, it would require public companies to disclose the financial impacts of climate-related matters listed above if the sum of the absolute values of all the impacts on the line item is at least one percent of the total line item for the relevant fiscal year. The proposed one percent threshold for disclosure in notes to financial statements is too low to provide meaningful information to investors. As a result, we believe that the SEC should eliminate the one percent threshold and utilize the traditional concept of materiality for this purpose. We fail to see how the one percent threshold would serve the interests of investors by requiring disclosure at this level which, in most instances, would not be material to the company, as a whole.

Treatment of New Disclosures under the Federal Securities Laws

The proposal treats the new climate-related disclosures as "filed", as opposed to" furnished" (other than disclosures in Form 6-K), which results in such disclosures being subject to additional liabilities under the federal securities laws. Given the fact that some proposed

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[6] See generally FASB Staff guidance entitled *The Intersection of Environmental, Social and Governance Matters with Financial Accounting Standards,* https://www.fasb.org/Page/ShowPdf?path=FASB_Staff_ESG_Educational_Paper_FINAL.pdf (March 13, 2021).

climate-related disclosures are based on projections and assumptions, and the “methodology underlying climate data continues to evolve”,[7] we believe that the SEC should not impose additional liability standards for disclosures of metrics and data that continue to evolve and rely on a significant number of estimates and assumptions or third-party information. As a result, we believe that these climate-related disclosures should be treated as “furnished” when included in SEC reports or registration statements.

Phase-in of Final Rules

Given the requirements of the rule, companies need to implement robust processes to accurately measure and disclose the required information. The phase-in periods for new disclosure requirements, including financial statement requirements, attestation requirements and Scope 3 disclosures, are not sufficient to permit public companies and accounting or other firms that would provide attestation services, to implement changes to accounting systems and develop processes and methodologies necessary to effectively comply with these requirements. Assuming the final rule is released in late 2022, with appropriate changes necessitated by comments provided to the SEC, given the magnitude of the new rule and its extensive requirements, companies will need additional time to analyze the final rule and its requirements in order to develop the most effective method of compliance. We believe that each proposed phase-in period should be extended by a year.

Safe Harbor Protections

Since the proposed rules require the use of estimates and assumptions in a variety of places, as well as new disclosures based on methodologies underlying climate data that continue to evolve and rely on data obtained from third parties, we urge the SEC to provide companies with appropriate protection under the federal securities laws and a level of assurance when they make these disclosures that they can avail themselves of the safe harbors. The proposed rule specifically provides for a “safe harbor” for Scope 3 emissions disclosures under the proposed Item 1504(f) of Regulation S-K given the challenges with the calculation and disclosure of Scope 3 emissions. We support the provision of this safe harbor which is intended to alleviate concerns that public companies may have about “liability for information that would be derived largely from third parties in a registrant’s value chain.”[8] We urge the SEC to extend the availability of safe harbors to other areas of proposed rules where these same concerns exist with respect to estimates and assumptions in order to protect companies from litigation in this uncharted territory.

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[7] *See* 87 FR 21411 (2022).
[8] Id.

Conclusion

We would like to commend the SEC for its thoughtful consideration of these important issues related to climate change disclosure and the careful preparation of these proposed disclosure requirements. We appreciate the difficulty in attempting to define requirements applicable to all U.S. public companies and foreign private issuers with respect to an issue which is very company specific in many respects.

We support additional disclosure regarding *material* climate-related risks and believe that portions of the SEC's proposed rule represent a crucial step towards ensuring that investors get a clear, consistent, accurate and verifiable picture of material climate-related risks so that their interests are better served and protected. That having been said, we believe this regulation needs to be focused on more than just giving investors more standardized data to make investments decisions but to move investors towards the deployment of capital to companies that are engaging in tangible and sustainable business practices.

We urge the SEC to focus its regulation on an effort to incentivize companies to focus on sustainable business practices and not just addressing disclosure requirements. Disclosure alone will only address the concerns of investors but it will not move us as a society toward the redistribution of capital towards sustainable business practices. As a result, we have also highlighted changes we believe are necessary to address some inherent issues in the proposed rules, including the regulation of investment funds, and to focus on the overall intent of climate change regulation which is the creation of a more sustainable world.

We generally support adoption of a proposed rule requiring disclosure of material climate risks and opportunities, with the changes noted above. However, we would like to stress that the focus of regulation in this area should be on investment funds and their practices, in order to encourage changes in business practices that will address the realities of the climate change issues on the current global economy and humanity, and the steps that need to be taken to address such issues.

Thank you for your consideration.

Sincerely,

Long-Term Stock Exchange, Inc.

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