

June 17, 2022

Attention File Number S7-10-22

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Thank you for the opportunity to respond to SEC’s call for public input on its proposed rule for climate-related disclosures. I commend the SEC for acting on climate-related disclosures. Its proposed rule will empower the private sector to coalesce around a single set of guidance rather than continue to navigate the present scenario of bespoke approaches to disclosure.

As a senior ESG practitioner for nearly 15 years, I have been blessed with the opportunity to support the preparation of climate-related disclosures for multiple registrants across multiple sectors. I bring a first-hand perspective to the unique challenges, risks and opportunities of preparing climate-related disclosures, and knowledge of best practices for this significant undertaking. I hope my perspective can be of some use as the Commission works to improve its proposed rule.

The proposed rule is necessary to increase consistency, comparability and reliability of disclosures

The Commission rightly notes that its proposed rule is needed to increase consistency, comparability and reliability of disclosures. Earlier comments received from SASB, Americans for Financial Reform Education Fund and Public Citizen, Eni SpA, and BSR, have all referenced an “alphabet soup” of multiple voluntary disclosure frameworks, a proliferation of differing frameworks which has increased disclosure complexities and costs for registrants, and a fragmented environment that is limiting the impact of reporting and creating undue confusion and cost on the part of reporters.

IAC has noted that more than 125 third-party ESG data providers, including ESG ratings firms, have emerged to try to meet the informational demands of investors.¹ While the proposed rule may not eliminate a proliferation of alternative frameworks, it will help provide standardized information to all investors and greater consistency across all frameworks.

The main strength of the proposed rule is that it provides certainty in disclosure requirements, enabling more companies to engage without fear of having the goal posts moved on a near

¹ Including the Global Reporting Initiative (“GRI”), CDP (formerly the Carbon Disclosure Project), Climate Disclosure Standards Board (“CDSB”), Value Reporting Foundation (formed through a merger of the Sustainability Accounting Standards Board (“SASB”) and the International Integrated Reporting Council (“IIRC”)), and the TCFD

annual basis. It is not creating a new reporting burden; it is reducing the extant reporting burden by coalescing the market around a single source of truth.

Alignment with the Task Force on Climate-Related Financial Disclosure (TCFD) framework must be prioritized

The Commission's stated intent to align its proposed rule with the TCFD framework is welcome. TCFD has emerged as the most effective climate-related disclosure framework in the market, and has been endorsed by the G7 leaders.² Alignment with TCFD will enable greater global convergence of disclosures, and also ensure that US investments remain attractive to international capital markets that are also coalescing around TCFD. **(request for comment #3)**

The Commission is undoubtedly aware of work in the EU with the European Financial Reporting Advisory Group to develop European Sustainability Reporting Standards. Coordination between this effort and the Commission's proposal could result in a milestone achievement of consistent, comparable and reliable guidelines that are aligned in the two jurisdictions **(request for comment #183-188)**. As the European standards will also align with TCFD, the Commission's proposed alignment with TCFD will consolidate reporting guidance and simplify process, minimize burden and costs for registrants, and create a globally comparable reporting framework for investors.

Furthermore, today's consultancy and verification networks are familiar with TCFD and will be ready to support registrants complying with the proposed rule. Industry will not need to upskill service providers and assurance providers on a new regulation where they have limited experience.

To fully align with TCFD, the proposed rule should leave short/medium/long-term undefined as they relate to a timescale for climate risks **(request for comment #8, 21)**. Additional requirements for flood hazard disclosures and water stress disclosures should apply to those sectors identified as relevant in the TCFD guidance **(request for comment #13)**. These approaches also align with proposed Task Force on Nature-Related Financial Disclosure (TNFD) language.

TCFD guidelines include disclosures on transition planning process, but not the transition activities themselves, as some of this information may create competitive harm if disclosed. A better approach would be to view metrics related to GHG emission reduction as a proxy for a transition plan. Registrants may voluntarily disclose transition plans, but a mandated disclosure of a transition plan and strategic decisions goes beyond TCFD to create a new requirement. **(request for comment #46-#49)** Investors can have confidence that a registrant's management team is actively addressing climate risks and opportunities through its progress against

² <https://www.g7uk.org/wp-content/uploads/2021/06/Carbis-Bay-G7-Summit-Communique-PDF-430KB-25-pages-3.pdf>

meaningful GHG targets, without placing an additional and onerous burden on registrants to disclose the details of a transition plan.

TCFD defines upstream activities as: “Upstream activities include operations that relate to the initial stages of producing a good or service (e.g., material sourcing, material processing, supplier activities).”³ Upstream costs should be those costs related to these upstream activities. **(request for comment #70)**

Regarding the disclosure of Scope 3 emissions categories, the proposed rule should require disclosure of categories that are significant and relevant to a registrant, and not mandate disclosure of all categories. The “relevance” concept is aligned with TCFD, the CDP reporting framework and US EPA Scope 3 inventory guidance.⁴ **(request for comment #102-103)**

The proposed rule should not diverge from the TCFD unless the divergence is meant to address any deficiencies or gaps in the TCFD. Changing or adding to the TCFD guidance where there is no clear need for improvement only will increase confusion among registrants and assurance providers without providing additional value.

The timing of phased-in compliance must be modified to reflect the reality of GHG emissions reporting through the value chain

The reality of Scope 3 emissions is that reported emissions lag one year. Best practice begins with a company calculating its 2021 Scope 1 & 2 emissions and reporting them in mid 2022. A downstream company will access these numbers in mid 2022 – too late for its own reporting – and integrate these figures as 2022 Scope 3 emissions in its own mid 2023 report. It is simply unfeasible for value chain emissions to be fully calculated and cascaded across a value chain in the first 3-4 months of a calendar year.

The provision permitting an estimate of Q4 GHG emissions is helpful, especially for Scope 1 & 2, but the Commission must recognize that Scope 3 emissions are highly dependent on Scope 1 & 2 emissions both upstream and downstream. These numbers are not reported between value chain partners on quarterly bases. More accommodation is needed for Scope 3 emissions to match up with SEC filing dates. As an example, CDP, which requires this information, typically has a later deadline for reporting (July 27 for this year). Consideration should be given for two fiscal years prior for Scope 3 disclosures, to align with best practice, ensure better reliability of Scope 3 disclosures, and remain consistent with what companies are submitting to CDP. **(request for comment #98, 105, 125-127)**

³ https://assets.bbhub.io/company/sites/60/2021/07/2021-TCFD-Implementing_Guidance.pdf, pg 84

⁴ https://19january2021snapshot.epa.gov/climateleadership/scope-3-inventory-guidance_.html

Further, the proposed compliance date for large accelerated filers to disclose Scope 3 emissions must be pushed back until after SRCs are required to disclose Scope 1 & 2 emissions. Scope 3 emissions will consist in most cases of the Scope 1 & 2 emissions of SRCs (or even non-filers), and as SRC emissions are disclosed, the burden of Scope 3 reporting is reduced.⁵ The proposed out-of-sequence compliance dates will lead to unreliable Scope 3 disclosures, or worse, may inadvertently distort the market by driving large accelerated filers to work only with other large accelerated filers in their supply chains. **(request for comment #197-198)** For similar reasons, SRCs should not be exempted from disclosing Scope 1 & 2 emissions because this would limit the ability of large filers to disclose their Scope 3 emissions with an acceptable level of reliability. **(request for comment #175)**

The Commission should not require an attestation for Scope 3 emissions. **(request for comment #136)** As the Commission rightly notes, Scope 3 disclosures will improve as Scope 1 & 2 disclosures improve, so it is reasonable to expect that the quality and reliability of Scope 3 disclosures will improve without adding the significant burden and cost of Scope 3 attestation. Also, recognizing that attestation will not be required for Scope 1 & 2 of smaller issuers, there is a risk that larger issuers will indirectly bear the burden of smaller issuers' attestation through a Scope 3 assurance engagement, rather than smaller issuers engaging in Scope 1 & 2 assurance for themselves.

Quickly expanding the capacity of verifiers and assurance bodies is essential for the consistency and reliability of climate-related disclosures

Expanding the pool of service providers to include assurance providers other than registered public accounting firms is a high priority. It will increase access to resources and enable quicker implementation of the Commission's proposal, while not letting a lack of capacity at audit firms become a bottleneck. Practically, many of the accounting firms will seek to hire subject matter experts from specialist assurance providers to build their own internal expertise, so it makes sense to expand the universe of assurance providers to include these specialist organizations. The PCAOB can be directed to develop a separate registration process for service providers specific to climate disclosures. **(request for comment #143-145)** Many useful examples exist from standards bodies such as Verra⁶, Gold Standard⁷, Climate Action Reserve⁸ and others – these are helpful accreditation frameworks that support capacity-building for assurance services.

The proposed attestation schedule for Scope 1 & 2 emissions, while exempting Scope 3 emissions from attestation, should be retained. As noted in the proposed rule, the phased-in approach will enable registrants to install the necessary disclosure controls and procedures (DCP) but also enable assurance providers to upskill and install the necessary capacity to provide

⁵ See page 223 of the proposed rule

⁶ <https://verra.org/project/vcs-program/validation-verification/become-a-vvb/>

⁷ <https://globalgoals.goldstandard.org/become-a-vvb/>

⁸ <https://www.climateactionreserve.org/how/verification/how-to-become-a-verifier/>

limited and then reasonable assurance. **(request for comment #135)** Combining this phased-in approach with the acknowledgement that an attestation service provider does not have to be a registered public accounting firm, will increase the availability of attestation service providers and create a knowledge base/competency on-ramp for all involved parties.

Registrants should be required to disclose material information related to climate finance and carbon credits

Registrants should be required to disclose if they leverage climate-related financing instruments. However, details on the projects that would be funded with use of proceeds bonds, or specific KPIs incorporated into climate-linked financing, is an onerous level of detail that does not provide any more clarity on risk. The value of climate-related financing alone is a significant datapoint for evaluating a registrant's transition risk. **(request for comment #23)**

Registrants should be required to disclose the use of RECs and offsets. Additional consideration should be given to requiring disclosure of the role of offsets in meeting specific metrics. The proposed rule rightly discusses the risks and opportunities associated with the price of RECs and offsets, and it will be important to understand how much a registrant will rely on RECs and offsets to meet specific metrics. Offsets and RECs represent a form of revolving climate mitigation – companies must purchase new ones each year – so any disclosure of the role of RECs and offsets in climate strategy will indicate longer-term risks and opportunities. **(request for comment #24)** The proposed expenditure metrics requirement will overlap with requirements to disclose the use of carbon offsets or RECs, since these instruments are transition activity expenditures. The Commission should provide more clarification on what information is disclosed in which section (e.g., volume of offsets, total cost of offsets). **(request for comment #73)** Requiring registrants to disclose both a total amount of emissions with, and a total amount without purchased or generated offsets, is in alignment with recent guidance from the GHG Protocol and Science Based Targets Initiative. **(request for comment #101)**

The Commission should require registrants to discuss if they intend to meet their climate-related targets or goals through any purchase of offsets or RECs. This specific strategy is directly connected to climate related financial metrics. There is consensus that significant capital expenditures will be required to meet the most ambitious targets, and investors will want to understand how a registrant is deploying capital against its target. An oft referenced scenario is a registrant with an ambitious target but ambiguous plans, that is signaling its intent to deploy capital to purchase offsets/RECs in its target year, when prices for such instruments may be prohibitive. This is clearly material financial information for an investor. **(request for comment #170)**

While the proposed rule rightly includes several important items of information about offsets and RECs that should be disclosed, another valuable item of information that should be included is the vintage year of carbon offsets or RECs. **(request for comment #173)** Registrants have the

opportunity to purchase offsets or RECs in any given year but retire them (apply them against GHG targets) in future years, so a vintage year is necessary context to understand some of the information about the nature and location of underlying projects or cost of offsets.

To improve comparability across disclosures, the Commission should provide additional guidance on a definition of “costs that are partially incurred.” A loose interpretation of costs partially incurred toward climate-related events and transition activities could result in significant sums being reported – a company integrating climate criteria into its R&D stage gate process, or a company integrating a GHG assessment into all capital expenditures. On the other hand, a stricter interpretation – such as including only costs that are exclusively or explicitly related to climate – could result in small sums being reported that do not accurately or completely reflect a registrant’s risks or opportunities. A more concrete definition can ensure that disclosures are consistent, and the scope of such costs are understood by all parties involved. **(request for comment #79)**

The proposal for registrants to disclose scenario analysis when used – but not mandate that registrants conduct it – should be maintained. **(request for comment #30)** The proposed rule rightly recognizes the burden that mandated scenario analysis would place on registrants.⁹ Scenario analysis can be helpful for prioritizing strategic decisions that impact multiple climate scenarios, but it is not necessary to competently identify climate risks and opportunities, impacts and dependencies.

A new financial statement such as a consolidated climate statement should be considered in the context of additional ESG topics that may be integrated into disclosures in the future. A path forward that enables ease of use for registrants and investors today, while creating a stackable framework for tomorrow, will be the best course of action. **(request for comment #88)**

To ensure consistency across disclosures, the proposed rule must keep an eye on the future and tomorrow’s disclosure strategies – including perpetual safe harbor

The nature of climate-related disclosures, long-term climate targets and the material financial investments required to achieve those targets, makes it imperative that the proposed rule provide a modicum of certainty to registrants and investors. If the proposed rule is too near-sighted and inflexible, it runs the risk of being archived and rewritten even before its schedule of requirements comes to fruition.

The safe harbor that would apply to any registrant that discloses Scope 3 emissions must apply indefinitely. **(request for comment #133)** If the proposed safe harbor includes a sunset date, either arbitrary or based on as-of-yet unknown conditions being met, it will encourage registrants to disclose Scope 3 emissions only and always with minimum detail. In other words, they would

⁹ See page 91 of the proposed rule

not set a precedent for the extent of a Scope 3 disclosure in early years when a safe harbor provision is in effect, only to pull back in terms of detail once the safe harbor provision expires. Indefinite application of a safe harbor will encourage registrants to disclose fuller context of their Scope 3 emissions.

Registrants should be permitted to incorporate by reference some of the climate-related disclosure from other parts of the registration statement or annual report. **(request for comment #5-6)** This is not to minimize or diminish its importance, but to recognize the future potential of additional ESG disclosures beyond climate (natural capital and human capital (ID&E) are two topics that are currently discussed at board-level). Instead of creating separate captioned components of reports, it will be important to integrate all these disclosures, and for registrants to demonstrate how they approach broad ESG risks and opportunities in an integrated and strategic manner.

The proposed rule should be added as a new subpart to Regulation S-K and a new article to Regulation S-X **(request for comment #1)** to provide a model and pathway for future ESG disclosures to similarly be integrated with regular business reporting.

The Commission must improve the proposed rule to provide investors with decision-useful information, while avoiding superfluous requirements that create unnecessary burdens for registrants

Several provisions in the proposed rule create superfluous requirements that generate additional disclosure burdens and additional disclosure risk, but limited to no value for investors. Investors want to understand that a registrant is managing its climate risks and opportunities; they do not want to understand (nor can they discern) if a registrant has correctly applied the most complex GHG accounting systems. The proposed rule rightly highlights that investors may have an overly simplistic understanding of assurance applied to a registrant's GHG emissions disclosure,¹⁰ yet in other places the proposed rule requires registrants to disclose material changes to calculation, disclose gaps in data, and describe overlaps in Scope 3 – wrongly insinuating that investors will be able to parse extremely complex changes to quantification methodologies and overlapping Scope 3 emissions. In this way the proposed rule contradicts itself.

Determining the technical proficiency with which a registrant has calculated GHG emissions is a task best left to assurance providers, not investors. Obtaining limited or reasonable assurance should be sufficient evidence for investor confidence. Excluding these onerous disclosure requirements will put less burden on registrants and avoids a scenario where registrants must manage the risk of investor misinterpretation of highly technical GHG accounting practices. **(request for comment #125, 127-128, 130)**

¹⁰ See page 235 of the proposed rule

Registrants should disclose on a disaggregated basis only those GHGs that are significant to the registrant's footprint. **(request for comment #94)** Outside of Scope 1, it is extremely difficult to disaggregate into distinct GHGs, and even within Scope 1 many registrants will not have significant levels of distinct GHG emissions. The effort to quantify those distinct emissions would far outweigh the value to any investors or other users of the information.

Most registrants will use multiple data sources to calculate their Scope 3 emissions, including multiple data sources within a single category. It is too onerous and irrelevant to list all data sources for each category. The Commission should align with well-established GHG reporting frameworks like CDP and request that registrants disclose what percentage of Scope 3 emissions are calculated using primary data vs secondary or public data. This is ultimately the question the proposed rule seeks to answer. **(request for comment #106)**

The proposed rule should remove the requirement to provide location data for emissions. **(request for comment #107-108)** GHG emissions are location agnostic; they do not have higher or lower impact on the atmosphere depending on their zip code. The proposed rule includes a location-based risk assessment in earlier sections. This information will be sufficient for investors and not require registrants to accomplish the daunting task of assigning mobile combustion emissions to a fixed location. Please note, this is a different question than identifying assets that are in places that could be affected by climate change. **(request for comment #12)**

The proposed rule should remove the requirement to report emissions by unit of production. **(request for comment #111)** This is feasible for registrants with homogenous production, but impossible for companies with complex products, that are vertically integrated, or that have multiple types of revenue-generating products and services. Revenue is an effective denominator that provides decision useful and comparable information, regardless of sector or industry.

The Commission has an opportunity to improve upon the operational boundaries concept developed by the GHG Protocol. This concept has proven ambiguous and ill-fitted for a number of real world scenarios.¹¹ A consistent application of GAAP to organizational boundaries across the entire climate-related disclosure would create a more straightforward and proven solution to determining organizational boundaries, while also eliminating the need to keep "two sets of books" for climate-related disclosures (i.e., separate boundaries for financial statements and GHG emissions). It would support comparability by aligning reporting boundaries across and within sectors. **(request for comment #119, 121-122)** However, by doing this the Commission will need to consider additional guidance for recalculating GHG emission baselines as organizations merge, acquire and divest. It is not clear how the Commission's proposal would "help investors track and compare a registrant's GHG emissions over time" without the

¹¹ For example, when a company is part of an industrial park and sources steam energy from another organization in the park which leases its facility

necessary guidance on recalculating baseline and historical emissions as a registrant's business changes. **(request for comment #116, 123)**

I am grateful for the opportunity to share my perspective based on decades of experience with ESG disclosures in the corporate sector. I commend the SEC for acting to require science-based, climate-related disclosures, and for aligning closely with the most proven and effective elements of existing disclosure standards. The SEC stands at the door of an unprecedented opportunity to coalesce climate-related disclosures around a workable, credible and affordable framework that will empower the private sector to fulfill the promise of 21st century capitalism.

Sincerely,

Josiah McClellan

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