June 16, 2022

The Honorable Gary Gensler
Chairman, Securities and Exchange Commission
Via email: rule-comments@sec.gov
100 F Street, NE
Washington, DC 20549

RE: File Number S7-10-22 -- Proposed Rule*: The Enhancement and Standardization of Climate-Related Disclosures for Investors*

Dear Chairman Gensler,

The California Bankers Association (CBA) appreciates the opportunity to submit written comments in response to the rulemaking proposal of the Securities and Exchange Commission (the "Commission"), entitled "The Enhancement and Standardization of Climate-Related Disclosures for Investors (the "Proposed Rule"). CBA further respectfully urges the Commission to consider the recommendations posed in the American Bankers Association's (ABA) comment letter, with which we are aligned.

CBA is a division of the Western Bankers, one of the largest banking trade associations and regional educational organizations in the United States. CBA advocates on legislative, regulatory, and legal matters on behalf of banks doing business in the state of California.

Echoing the statements of ABA, CBA supports efforts of the Commission to provide investors with decision-useful information related to climate risk. However, the proposal is inconsistent with the foundational materiality concept, will add significant costs to registrants and even many private companies through its detailed requirements, and will create substantial operational challenges, especially given the nascent state of climate-related disclosures and risk management that varies based on a company's size and industry.

Departure from Established Materiality Standard

The traditional concept of materiality must be retained and applied to all aspects of the Proposed Rule, including financial statement presentation of climate impacts, as well as reporting of any of the scopes of greenhouse gas emission estimates. The Proposed Rule's significant departure from longstanding principles-based disclosure and the established definition of "materiality" would likely introduce disclosure inconsistency and confusion.

As drafted, the Proposed Rule deviates from the longstanding definition of materiality established under the U.S. securities laws and Supreme Court precedent. As established in *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976), the Supreme Court provided the oft-cited definition of materiality, that information will be deemed material "if there is a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities or how to vote." This standard has been confirmed in subsequent Supreme Court precedent, including in *Basic Inc. v. Levinson*, 485 U.S. 224, 108 S. Ct. 978 (1988).

Financial Statement Line-Item Disclosure. The granularity of climate risk disclosure should be scalable and appropriate to the reporting entity's size and complexity. The Proposed Rule would require companies to provide certain climate-related information on a line-item basis unless the impact for a particular line item is less than one percent of the total of each such line item. Such a low threshold is unusual, may not be meaningful to investors, and may cause confusion, since it may be very challenging to bring a corresponding level of detail to this level of precision in reporting given the nature of some of the required disclosures.

Scope 3 Emissions Disclosure. Mandating disclosure of climate-related risks of a bank's entire value chain, instead of focusing on the risks related to its financial statements and operations, will result in banks assuming the responsibility of assessing and disclosing emissions and risks for which they should not be responsible. Financial services companies have unique treatment within the Greenhouse Gas (GHG) Protocol, as Scope 3 emissions of banks include "financed emissions," which are gasses emitted within investments, including both equity and debt instruments. In other words, not only are Scope 3 emissions of a bank's operations to be estimated, but a portion of the emissions of borrowers (Scope 1, 2, and 3) in a lender's portfolio are then also included within the Scope 3 emissions measurement of the lender. The collection and monitoring of this information would be incredibly challenging and would not yield beneficial information due to multiple overlaps in counting.

In light of the challenges that exist today, we recommend that at a minimum, all required greenhouse gas emissions reporting should be subject to the traditional concept of materiality in the qualitative sense defined by the Supreme Court.

High Cost of Compliance With Risks of Unintended Consequences

CBA believes that the Commission's estimates with respect to annual compliance costs do not fully reflect the financial impact the Proposed Rule will have, particularly on the banking industry. Estimating the cost of compliance with the Proposed Rule is complicated by requiring disclosures of Scope 3 emissions, particularly "financed emissions." Best practices are still evolving around Scope 3 emissions and as such, reasonable cost estimates to comply will be dependent on coalescence on practices.

The Commission suggests that these costs are expected to decrease over time. However, as seen with the enhanced executive compensation disclosure compliance costs following the Dodd Frank Act's enactment, we instead anticipate that compliance costs will remain significantly elevated over time, have the potential to fluctuate widely year-over-year depending on several variables, and are not necessarily lower for registrants that qualify as smaller reporting companies.

Further, the material adverse financial impact for banks would not be isolated to the expense side of the income statement and may result in unintended consequences. For instance, certain entities may be unable or unwilling to provide the sort of access and information required by registrant companies in order to make the mandated disclosure for any number of reasons. These private companies may lose valuable relationships with public company counterparts who will engage instead with other companies that can more readily and reliably gather and share necessary data or who have a different calibration with respect to the competitively sensitive nature of the required disclosure. This could lead to unintended and harmful constriction in the banking industry and beyond, and cause direct financial harm (the loss of business, the shuttering of the business, and likely increased litigation risk) to companies across the country. Women- and minority-owned companies may be the most adversely impacted, as they are generally smaller and would not be public companies with compliance mechanisms already in place – this may also have the unintended consequence of cutting against a bank's DE&I goals.

Stronger Safe Harbors & Longer Transition Periods Are Needed

Even if the Commission adopts recommendations from CBA and ABA related to materiality, scalability, and financed emissions, the rule must recognize the realities of the nascent state of climate-related disclosures and financial risk management and the operational challenges presented if prescriptive disclosures are adopted in the Final Rule. Due to the nascent stage of climate-related risk management, regulators worldwide have acknowledged significant gaps in climate risk-related data. Companies of all sizes are likely to struggle in implementing effective and reliable processes, modeling, analysis, and forecasting.

To encourage honest discussion of climate risks, the safe harbor that currently exists must be significantly enhanced beyond the proposed inclusion of Scope 3 GHG measurements. Such an expansion may be considered for a specific time period or could clarify that the "reasonable basis" of the safe harbor would apply to situations where the company is not aware that underlying data or modeling assumptions are demonstrably false.

Similarly, due to gaps in data and the nascent stage of collecting, auditing, and analyzing Scope 3 emissions, particularly financed emissions, significant time will be necessary to design, test, and implement adequate systems for compliance. If the Commission considers financed emissions necessary, such processes will require transition periods longer than those provided in the Proposed Rule. Additional transition time will be needed if a Final Rule is made effective.

Finally, CBA respectfully recommends that in order to avoid a patchwork of competing or conflicting requirements and data sets – which is especially critical while best practices are still evolving – any Final Rule adopted by the Commission should set the policy for climate-related disclosures, and the Final Rule must expressly assert preemption.

Thank you for the opportunity to provide commentary on this rulemaking; we appreciate your consideration of our recommendations. We welcome any questions you may have regarding our letter – you may contact Melanie Cuevas at [redacted].

Sincerely,

Melanie Cuevas,
Vice President of Government Relations
California Bankers Association