June 17, 2022

Vanessa A. Countryman
Secretary Securities and Exchange Commission
100 F Street, NE Washington,
DC 20549-1090

Re: Comments on the Proposed Rule "The Enhancement and Standardization of Climate-Related Disclosures for Investors," SEC File No. S7-10-22.

Dear Ms. Countryman:

I have reviewed the proposal and provided responses to certain of the questions included in the proposed rule. Please pay particular attention to question #119 below as I believe that certain registrants may have no legal ability to comply with parts of the proposed rule and I'm not sure this was the intention of the Commission.

Question 63. Is it clear which climate-related events would be covered by "severe weather events and other natural conditions"? If not, should we provide additional guidance or examples about what events would be covered? Should we clarify that what is considered "severe weather" in one region may differ from another region? For example, high levels of rainfall may be considered "severe weather" in a typically arid region.

Answer – No, it is not clear which climate-related events would be covered by "severe weather events and other natural conditions. Since this entire release is about climate change, shouldn't the "climate-related event" have some relationship to climate change? For example, would suggest that the disclosure be limited to those "severe weather events and other natural conditions whereby the registrant has a reasonable belief that such event was the direct result of climate change or significantly intensified by climate change". It would appear the proposed rule will result in many weather events that have nothing to do with climate change being included in the scope of the disclosure and that doesn't appear to be the information that investors are looking for.

In addition, what if climate change causes a permanent change in the environment causing a permanent change in business? For example, what if the Company's business was in part to provide tours on a glacier and the glacier melts due to climate change? Would the company be required to disclose the loss in revenue every year for the rest of time? What would even be the point of this disclosure each year as the melted glacier becomes the "new normal"?

Question 64. Are the proposed requirements for calculating and presenting the financial impact metrics clear? Should the analysis be performed and disclosed in a manner other than on a line-by-line basis referring to the line items of the registrant's consolidated financial statements

Answer – I agree the analysis should be performed and disclosed in a manner other than on a line-by-line basis referring to the line items of the registrant's consolidated financial statements. A one-sized fits all approach will not work in this situation as the impact of climate change can massively vary between companies. The assessment of materiality should relate the financial statements as a whole and not individual line items. In addition, the disclosure should be limited to broad categories of assets, liabilities, revenues, expenses, operating cash flow, financing cash flow and investing cash flow, rather than going down to the individual line item in each financial statement.

To illustrate the absurdity of the proposed rule, as noted in Article 5 – Commercial and Industrial Companies, each non-current asset must be separately presented on its own line if greater than 5% of total assets. Therefore, a company with $100 million of total assets and property, plant and equipment of $5 million would have to disclose climate change transition capex purchases of $50,000 (1% of $5 million). A $50,000 purchase to a $100 million company is just barely a rounding error. Is there any evidence that any investor group is pushing to know $50,000 purchases in a $100 million company? Unlikely. The assessment is even more absurd if you look at current assets (the Article 5 threshold is 5% of current assets not total assets) and so companies would end up disclosing amounts much less than rounding errors. To make matters even worse, in some cases a line item can be more than 5% in a prior year but can be much less than 5% in the current year. Continuing with the example above, what if the property, plant and equipment was $5m in the prior year and $0.5 million in the current year due to impairments? The 1% threshold for the current year would be $5,000 for a $100 million company. No reasonable person can justify such a methodology of disclosure.

What makes the most sense would be a separate section of the MD&A that outlines material impacts on the financial statements from climate change, without prescribing specific thresholds.

Question 89. Should we require the disclosure to be provided outside of the financial statements? Should we require all of the disclosure to be provided in the proposed separately captioned item in the specified forms?

Answer – Yes you should require the disclosure to be provided outside of the financial statements. The natural location for this disclosure is a separate section of the MD&A. The purpose of the MD&A is to discuss the financial statements and the impact of climate change should be one of these items. The only reason to include this information in the financial statements is to require it to be "audited". This is not a reasonable request as it elevates the importance of climate change impacts on the company to be higher than all other factors impacting the company and this is obviously not the case.

Question 98. Should we require a registrant to disclose its Scope 3 emissions for the fiscal year if material, as proposed? Should we instead require the disclosure of Scope 3 emissions for all registrants, regardless of materiality? Should we use a quantitative threshold, such as a percentage of total GHG emissions (e.g., 25%, 40%, 50%) to require the disclosure of Scope 3 emissions? If so, is there any data supporting the use of a particular percentage threshold? Should we require registrants in particular industries, for which Scope 3 emissions are a high percentage of total GHG emissions, to disclose Scope 3 emissions?

Answer – It is widely understood that there is no possible way to compile GHG emissions for Scope 3 emissions with any reasonable degree of accuracy. Therefore, there is no reasonable basis to require disclosure of the precise number and investors are not going to use this precise number. Instead, an investor needs to know <u>qualitatively</u> the nature and extent of the parts of the business that involve Scope 3 emissions to be able to get a general idea of the magnitude of risks as outlined in the proposed regulation. The precise amount of Scope 3 emissions is not needed to gain this understanding. As such, Scope 3 emissions disclosure should be modified from quantitative to qualitative or tabled for further study.

Question 119. Alternatively, should we require registrants to use the organizational boundary approaches recommended by the GHG Protocol (e.g., financial control, operational control, or equity share)? Do those approaches provide a clear enough framework for complying with the proposed rules? Would such an approach cause confusion when analyzing information in the context of the consolidated financial statements or diminish comparability? If we permit a registrant to choose one of the three organizational boundary approaches recommended by the GHG Protocol, should we require a reconciliation with the scope of the rest of the registrant's financial reporting to make the disclosure more comparable?

Answer – It is imperative that registrants be able to exclude investments that qualify for equity method accounting ("an equity method investment") within the organizational boundary. In most cases, an investor does not have any legal access to the detailed operational records and operational staff of the equity method investment that would enable compliance with this proposed regulation as currently drafted. For example, disclosure of GHG emissions for Scope 1, Scope 2 and Scope 3 will require access to very detailed records of the equity method investment, including operational records of fuels consumed and individual purchases of goods and services. This information is not going to be available to the investor/registrant in most cases. Also, this proposed rule, which presupposes that the investor/registrant has complete and unrestricted access to the records of the equity method investment is entirely inconsistent with the basic principle underlying the requirements of FASB ASC Topic 323 Investments – Equity Method and Joint Ventures) and that is that the investor/registrant should be able to comply with Topic 323 with only limited/summarized financial information of the equity method investment that would normally be available to a shareholder and/or a board member that exercises significant influence but does not control.

Furthermore, by including investments that qualify for equity method accounting in the organizational boundary, GHG emissions from these investments are effectively treated no different that those within controlled subsidiaries. Even if the investor is able to gain assess to the records to comply with this proposal, which may not be possible in many cases, inclusion of these GHG emissions causes two issues:

i. It causes a misleading result whereby disclosure of GHG emissions for an equity method investment is included in the GHG emissions total, yet almost all other disclosures within the Form 10-K or Form 20-F (whether financial and non-financial), exclude equity method investments. For example, please refer to the GHG Intensity proposal on pages 180 and 181 of the proposed rule. If an investor was to compare a company that had equity method investments to a company in the same industry that did not have equity method investments, the GHG emissions per dollar of revenue or GHG emissions per dollar of invested capital in fixed assets, would not be comparable between the two companies, even if the GHG intensity was in fact exactly the same between the two companies as total revenue and total invested capital in fixed assets exclude the impact of equity method investments as required by GAAP.

ii. it erroneously implies the Company has control over the activities that have caused the GHG emissions even though the Company has no control over them.

Question 134. Should we provide an exemption from Scope 3 emissions disclosure for SRCs, as proposed? Should the exemption not apply to a SRC that has set a target or goal or otherwise made a commitment to reduce its Scope 3 emissions? Are there other classes of registrants we should exempt from the Scope 3 emissions disclosure requirement? For example, should we exempt EGCs, foreign private issuers, or a registrant that is filing or has filed a registration statement for its initial public offering during its most recently completed fiscal year from the Scope 3 disclosure requirement? Instead of an exemption, should we provide a longer phase in for the Scope 3 disclosure requirements for SRCs than for other registrants?

Answer – Instruction 2 to the definition of smaller reporting company under 17 CFR 230.405 indicates that smaller foreign private issuers that file on the foreign private issuer forms cannot be SRCs. Therefore, the accommodations given to SRCs in this proposal are not similarly offered to smaller foreign private issuers. This outcome unfairly disadvantages smaller foreign private issuers. Furthermore, consider that some of these smaller foreign private issuers have no public float and yet the regulatory burden placed on them is consistent with much larger domestic companies with a significant investor base. All of the accommodations given to SRCs should be similarly provided to foreign private issuers that would have otherwise qualified as an SRC, had they not filed on foreign private issuer forms or at the very least to those foreign private issuers with no public float.

Question 135. Should we require accelerated filers and large accelerated filers to obtain an attestation report covering their Scope 1 and Scope 2 emissions disclosure, as proposed? Should we require accelerated filers and large accelerated filers to obtain an attestation report covering other aspects of their climate-related disclosures beyond Scope 1 and 2 emissions? For example, should we also require the attestation of GHG intensity metrics, or of Scope 3 emissions, if disclosed? Conversely, should we require accelerated filers and large accelerated filers to obtain assurance covering only Scope 1 emissions disclosure? Should any voluntary assurance obtained by these filers after limited assurance is required be required to follow the same attestation requirements of Item 1505(b)–(d), as proposed?

Answer – No. If the SEC finds that there are significant issues with the accuracy of GHG emissions disclosures after this rule is implemented, then we should consider taking this extra step, but for now it is not warranted.