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June 17, 2022
Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549

Re: File No. S7-10-22: The Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Ms. Countryman:

We are writing on behalf of the Union of Concerned Scientists (UCS) to comment on the above referenced Proposed Rule by the Securities and Exchange Commission (the "SEC" or the "Commission") titled "The Enhancement and Standardization of Climate-Related Disclosures for Investors." We strongly support the rule's many provisions for mandatory climate and environmental, social, and governance (ESG) disclosures, and believe the rule can be strengthened further with additional requirements for the disclosure of Scope 3 emissions, political lobbying, and risks to communities impacted by corporate activity. The SEC has a duty to protect the public against mounting climate change impacts by compelling companies to disclose information important to investors, and this rule falls squarely within the agency's mandate.

With the support of half a million scientists and members, UCS is the leading science-based nonprofit working for a healthy planet and a safer world. We are also an institutional investor. UCS researches and educates the public about the dangers of climate change, including the unequal burdens borne by people of color and low-income communities. We also advocate for building resilience to climate change through actions taken at every level of government, as well as within the U.S. financial system. As an active member of several networks of sustainable and responsible investors, UCS provides scientific advice and analysis to shareholder advocates to promote climate action and corporate transparency.

UCS has publicly supported robust climate risk disclosure for many years. Given the seriousness of climate change, action at the administrative, regulatory, and legislative levels to strengthen climate disclosures is urgently needed. UCS has previously submitted comments to the Commission's 2021 request for information[1], the Commodity Futures Trading Commission,[2] and the Federal Housing Finance Agency[3] to highlight each body's role in ensuring these outcomes. We have endorsed legislative solutions

[1] Cleetus, R. and K. Mulvey. 2021. Union of Concerned Scientists Response to the SEC RFI on Climate Change Disclosures. Online at https://www.sec.gov/comments/climate-disclosure/cll12-8915241-244807.pdf
[2] Pinko, N., R. Cleetus, and K. Mulvey. 2020. Union of Concerned Scientists Submissions to the Climate-Related Risk Subcommittee Under the Market Risk Advisory Committee of the CFTC. Online at https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62482&SearchText=
[3] Cleetus, R. and S. Udvardy. 2021. Union of Concerned Scientists Response to the FHFA RFI on Climate Risk. Online at https://www.fhfa.gov/AboutUs/Contact/Pages/input-submission-detail.aspx?RFIId=1426

such as the Climate Risk Disclosure Act of 2021[4] and testified before Congress[5] on the risks of climate change to the financial sector. We also signed on to letters authored by Americans for Financial Reform / Public Citizen, Action Center on Race and the Economy / The Ocean Conservancy, and First Peoples Worldwide / Amazon Watch supporting the rule.

We applaud the Commission for incorporating many of these recommendations into the proposed rule, requiring that issuers disclose:

- Scope 1, 2 & 3 emissions as defined by the Greenhouse Gas Protocol;
- Disaggregated information on climate-related financial impacts, expenditures, and assumptions in public financial filings;
- The role of carbon offsets and renewable energy credits (RECs) in transition plans.

However, the potential impact of the rule is weakened by not requiring disclosure of:

- Scope 3 emissions when the issuer doesn't consider them material;
- Political activity;
- Effects on communities of climate impacts resulting from corporate activities.

Disclosing Climate-Related Impacts, Role of Offsets and Full Scope of Emissions Should be Mandatory

Climate change is a systemic and growing risk to our economy yet is not priced into most market decisions today because of multiple market failures. To function effectively, the financial system requires transparent, uniform disclosure of climate risks, based on the best available science, to evaluate which companies are best prepared to weather the physical and transition risks of climate change. Though many companies claim they are responding to investors by making net-zero pledges and issuing annual sustainability reports, research has found these reports lack the comparable and consistent metrics that would enable investors to evaluate their claims.[6] Financial institutions are also failing to properly price climate risks into financial assets, creating an unstable financial system with broader implications for the economy and the public.

Investors not only need consistent and comparable information, they need it in an accessible and standardized format. That is why the proposed requirement that issuers report the impacts of climate change and transition activities on their consolidated financial statements is so important. Requiring issuers to disclose disaggregated financial metrics that will be subject to audit must remain in the rule. Such a requirement is consistent with existing international frameworks, which is important for addressing a global challenge like climate change. As noted in the proposed rule text, investors ranging from Alphabet Inc. to Walmart have called for the SEC to base its climate disclosure regime on the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) because it is already used by hundreds of companies and investors globally. Since many companies traded on US exchanges are already making climate-related disclosures under TCFD-derived standards mandated by

[4] Letter in support of the Climate Risk Disclosure Act. 2021. Online at https://ucsusa.org/sites/default/files/2021-05/climate-risk-disclosure-act-support-051121.pdf
[5] Cleetus, R. 2021. Testimony for the House Financial Services Subcommittee on Consumer Protection and Financial Institutions hearing. Online at https://financialservices.house.gov/uploadedfiles/hhrg-117-ba15-wstate-cleetusr-20210630-u1.pdf
[6] Climate-Related Market Risk Subcommittee. 2020. *Managing Climate Risk in the U.S. Financial System.* Washington, D.C.: U.S. Commodity Futures Trading Commission, Market Risk Advisory Committee.

countries including the United Kingdom and Canada, compliance costs with the new US standards will be low.

However, the TCFD framework lacks some guardrails necessary in the U.S. financial and legal context, most importantly by failing to require companies to disclose Scope 3 emissions. As explained further below, UCS believes Scope 3 emissions are of de facto material interest to investors. Delegating determination of materiality to companies may make sense in other countries where the legal system better protects investors against long-term risks like climate change, but in the United States regulatory context, Scope 3 disclosures should be mandatory.

Similarly, the proposed rule states that investors and their advocates recommended the SEC base its emissions disclosure standards on the Greenhouse Gas Protocol (GHG Protocol) because it has become a leading accounting and reporting standard for greenhouse gas emissions. Using the GHG Protocol's definition of emission "scopes" will help minimize compliance costs while enabling investors to evaluate whether companies are living up to their promises.

The report by Working Group III[7] of the recently released Sixth Assessment (AR6) by the UN Intergovernmental Panel on Climate Change (IPCC) cited the TCFD as an example of how "Support and guidance for enhancing transparency can promote capital markets' climate financing by providing quality information to price climate risks and opportunities." The report warns, however, that "The outcome of these market-correcting approaches on capital flows cannot be taken for granted…without appropriate fiscal, monetary and financial policies," and that "In addition to indirect and direct subsidies, the public sector's role in addressing market failures, barriers, provision of information, and risk sharing (equity, various forms of public guarantees) can encourage the efficient mobilization of private sector finance."

UCS also strongly supports the SEC's proposal to require disclosure of the role that carbon offsets or renewable energy credits (RECs) play in each registrant's climate-related business strategy. While registrants should prioritize strategies and actions that result in direct emission reductions, we recognize that many registrants currently use carbon offsets and/or RECs as a partial or even primary means of achieving their emissions reduction goals. However, it is important to clearly articulate in the final rule that RECs and offsets are not the same. While both represent the environmental benefits of certain emission mitigation actions, they are different instruments used for different purposes. In addition to differences in how they are sourced and measured, RECs can only be used to lower a registrant's market-based scope 2 emissions from purchased electricity, while offsets are used for net adjustments to gross emissions.

Both offsets and voluntary RECs do, however, carry financial risks. As such, disclosure of their respective source, use, and impact is vital for investors to review and evaluate. The proposed rule identifies price risks associated with the volatility of RECs and offsets markets due to the availability and durability of the products. While this is appropriate, there are additional risks to investors such as litigation and reputational risk that should also be analyzed and disclosed. In addition, registrants that rely on RECs can minimize risks to investors by disclosing information that ensures a credible usage claim. This information should include credible generation data and exclusive ownership of and claims to the environmental and climate attributes associated with the energy produced.

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[7] IPCC. 2022. *Climate Change 2022: Mitigation of Climate Change.* Intergovernmental Panel on Climate Change. Online at https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_FinalDraft_FullReport.pdf

To further ensure credibility[8], registrants should also disclose whether their usage and credit claims have been verified by a reputable and recognized independent third party.

This approach has been successfully utilized by other federal agencies. The Federal Trade Commission (FTC) has published[9] Guides for the Use of Environmental Marketing Claims, or "Green Guides" (see also FTC Green Guides' Statement of Basis and Purpose)[10], which contain guidance specifically regarding claims related to the renewable energy and REC usage. Companies making environmental claims that fail to comply with the Green Guides risk action from the FTC or from State Attorney Generals' offices.[11]

Climate Risk is Material to Investors, and So Are Scope 3 Emissions

Delegating disclosure of Scope 3 emissions to issuers based on whether the issuer considers Scope 3 material or not will make the rule less effective and enforceable. Before discussing the reasons for our disagreement, we must address the underlying issue of the materiality of climate disclosure, since it is key to making the case for the materiality of Scope 3 emissions.

The proposed rule states that "A matter is 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." As stated above, UCS works closely with shareholder advocacy groups, and many rely on UCS research in their climate-related corporate engagements and resolutions. Not only have shareholder proposals calling on companies to cut emissions throughout the supply chain gained support in recent years, but investors are also calling on governments to mandate emissions reductions as well. More than seven hundred investors representing over USD $52 trillion in assets signed a letter in 2021 asking governments to set their Nationally Determined Contribution toward cutting emissions at net-zero by 2050 or sooner.[12] Activist investors aren't the only ones demanding this information: Institutional investors like the California State Teachers Retirement System (CalSTRS) and organizations representing retail investors are also broadly supportive of climate risk disclosure. A recent poll found that 63% of investors would factor climate change-related factors such as Scope 3 emissions into their investment decisions if that information was standardized, free, and easy to find.[13]

The reasons investors give for demanding mandatory climate disclosure are the same ones that justify including Scope 3 emissions in those disclosures. Investors need to know how companies' financial outlooks will be affected by the range of impacts resulting from climate change. The rule adopts the TCFD's classification of risk into two categories: Physical risk and transition risk. Physical risks include acute threats to a business resulting from events such as extreme weather in addition to chronic threats such as such as sea level rise, drought, and increased wildfires. Transition risks are negative financial impacts resulting from factors such as changes in environmental regulation or consumer preferences, decreased demand for carbon-intensive products, and risk of legal liability and litigation defense costs.

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[8] Braslawksy, J., T. Jones, and M. Sotos. 2016. *Making Credible Renewable Electricity Usage Claims.* The RE100. Online at https://www.there100.org/sites/re100/files/2020-09/RE100%20Making%20Credible%20Claims.pdf
[9] FTC Guides and Trade Practice Rule, 16 C.F.R. § 260 (2012).
[10] FTC (Federal Trade Commission). n.d. "The Green Guides: Statement of Basis and Purpose." Online at https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf
[11] Office of the Vermont Attorney General. 2016. *Guidance for Renewable Energy Marketing Claims.* Online at https://ago.vermont.gov/wp-content/uploads/2018/01/Guidance-on-Renewable-Marketing.pdf
[12] Letter in support of governments setting their NDCs toward cutting emissions. 2021. Online at https://theinvestoragenda.org/wp-content/uploads/2021/09/2021-Global-Investor-Statement-to-Governments-on-the-Climate-Crisis.pdf
[13] Americans for Financial Reform Education Fund and Public Citizen. 2022. *Results of a nationwide survey: Retail investors' support for the SEC mandating climate-related financial disclosures from public companies.* Embold Research. Online at https://ourfinancialsecurity.org/wp-content/uploads/2022/04/FINAL-Report_Climate-Disclosure-Survey-Results_AFR-PC-2.pdf

This last factor is a fast-growing risk with hundreds of climate litigation cases advancing around the world, and precedent-setting rulings such as that by a Dutch court ordering Shell to cut its emissions by 45 percent compared with 2019 levels by 2030.[14]

High carbon-emitting companies are the most vulnerable to the latter type of risk, as the TCFD points out.[15] Scope 3 accounting can help companies and investors understand what parts of their value chain contribute the most to the emissions fueling these impacts and risks so they can focus their reduction efforts accordingly.

This is particularly true of the oil and gas industry. Burning fossil fuels for energy accounted for 92% of U.S. anthropogenic CO2 emissions in 2019,[16] and Scope 3 emissions account for 80-90% of the oil and gas sector's total emissions.[17] UCS research in the emerging field of attribution science, in which a company's emissions are linked to real-world effects, demonstrates why disclosure of Scope 3 is critically material for this sector.

Two papers[18] led by UCS scientists and published in peer-reviewed journals found that:

- Emissions traced to 88 of the largest fossil fuel producers and cement manufacturers—including their Scope 3 emissions—are responsible for more than 55 percent of the increase in ocean acidification, about 52 percent of the global temperature rise, and about 34 percent of global sea level rise between 1880 and 2015.
- Emissions traced to 48 major investor-owned fossil fuel producers—which include ExxonMobil, Chevron, Royal Dutch Shell, BP, Peabody Energy, and ConocoPhillips—contributed about 17 percent of the rise in ocean acidification, about 17 percent of global average surface temperature increase, and around 13 percent of sea level rise from 1880 to 2015.
- During the critical period of 1965 to 2015, when fossil fuel companies actively spread disinformation about climate science and solutions, emissions traced to those same 48 companies contributed approximately 15 percent of the increase in ocean acidification, around 15 percent of the global average temperature increase, and about 9 percent of sea level rise observed between 1880 and 2015.

Companies and trade associations voicing opposition to the proposed rule claim that measuring Scope 3 would be too burdensome, but methods for accounting these emissions have existed for years. The GHG Protocol published its Scope 3 accounting and reporting standard along with a product life cycle accounting and reporting standard in 2011. The Science Based Targets Initiative (SBTI) launched in 2015 requires all companies to do a complete Scope 3 inventory and set targets when those emissions are significant (i.e., when over 40% of a company's total emissions are in Scope 3). The most recent SBTI

[14] Merner, L.D. 2022. *A Year After the Shell Ruling: Big Victories and Next Steps for Climate Litigation*. The Equation (blog). May 26. https://blog.ucsusa.org/delta-merner/a-year-after-the-shell-ruling-big-victories-and-next-steps-for-climate-litigation/
[15] TFCD. 2021. *Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures.* https://www.fsb.org/wp-content/uploads/P141021-4.pdf
[16] *Energy and the environment explained: Where greenhouse gases come from. 2021*. https://www.eia.gov/energyexplained/energy-and-the-environment/where-greenhouse-gases-come-from.php
[17] CDP, *The Carbon Majors Database: CDP Carbon Majors Report 2017.* Online at https://cdn.cdp.net/cdp-production/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf?1501833772
[18] Ekwurzel, B., J. Boneham, M. W. Dalton, R. Heede, R. J. Mera, M. R. Allen, and P. C. Frumhoff. 2017. *The Rise of Global Atmospheric CO_2, Surface Temperature, and Sea Level from Emissions Traced to Major Carbon Producers. Climatic Change 144*, October. https://doi.org/10.1007/s10584-017-1978-0; Licker, R., B. Ekwurzel, S. C. Doney, S. R. Cooley, I. D. Lima, R. Heede, and P. C. Frumhoff. 2019. *Attributing Ocean Acidification to Major Carbon Producers. Environ. Res. Lett. 14,* No. 12. https://iopscience.iop.org/article/10.1088/1748-9326/ab5abc

progress report states that "96% of SBTI companies with approved science-based targets have targets for scope 3 emissions."[19]

Where the Rule Can Be Strengthened: Political Activity and Human Impacts

The rule should mandate disclosure of political activity by corporations because such activity can constitute a material risk to investors. UCS recommended in its previous comment that the SEC require disclosure of political activity, including direct and indirect election spending and lobbying. Investors have pressed companies to disclose lobbying-related activities for more than a decade, arguing that lobbying can degrade a company's reputation if it conflicts with the company's stated priorities, which in turn impacts shareholder value. The importance of this information to investors is reflected in the fact that the 15 proposals requesting political contributions disclosure filed in 2021 won 46 percent support on average, while the 23 proposals calling for lobbying spending disclosure received 37.5 percent support.[20]

Companies have responded by providing reports on their lobbying activities and trade association memberships. However, UCS analyses[21] have found key gaps in these voluntary disclosures. One such gap is the failure to report the positions companies and their trade-group partners took when contacting lawmakers and producing communications materials. Without knowing these kinds of details, investors—and the general public—have only part of the story. Another question is whether the positions promoted by trade groups contradict their members' stated support of a low-carbon future. Powerful trade associations such as the American Petroleum Institute, US Chamber of Commerce, and National Association of Manufacturers frequently serve as proxies for the oil and gas industry's climate-unfriendly efforts.

A coalition of investor advocates have attempted to address this issue by creating a Global Standard on Responsible Climate Lobbying, which will measure companies' lobbying efforts to see whether they undermine the Paris agreement.[22] The standard will evaluate individual companies and industrial sectors for disparities between their public stances on climate change and their political activities behind the scenes. Again, investors are being forced to use their own resources to obtain information that regulators could and should be compelling companies to disclose.

The rule could also be strengthened by compelling companies to audit the ways in which climate impacts resulting from their activities affect communities. Many studies have documented how climate change disproportionally impacts working people and people of color. Indigenous populations are particularly vulnerable, for example to extraction of the critical minerals needed in the transition to a low-carbon economy often found on Indigenous lands. The IPCC said in its most recent report that "risks relating to national and international inequity—which act as a barrier to the (low-carbon transition)—are not yet

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[19] Science Based Targets. 2021. *Scaling Urgent Corporate Climate Action Worldwide: Science Based Targets Initiative Annual Progress Report*. Online at https://sciencebasedtargets.org/resources/files/SBTiProgressReport2021.pdf
[20] Gibson Dunn. 2021. *Shareholder Proposal Developments During the 2021 Proxy Season.* Online at https://www.gibsondunn.com/wp-content/uploads/2021/08/shareholder-proposal-developments-during-the-2021-proxy-season.pdf
[21] Peterson, L. 2022. *ExxonMobil Shows Its Lobbying Hand, But Hides Some Cards.* The Equation (blog). April 4. https://blog.ucsusa.org/laura-peterson/exxon-shows-its-lobbying-hand-but-hides-some-cards/; Pinko, N., K. Mulvey, B. Ekwurzel, and P. Frumhoff. 2018. *The 2018 Climate Accountability Scorecard: Insufficient Progress from Major Fossil Fuel Companies.* Cambridge, MA: Union of Concerned Scientists. Online at https://www.ucsusa.org/resources/climate-accountability-scorecard0#ucs-report-downloads. Mulvey, K. 2020. *Shell Inches Forward on Climate Action.* The Equation (blog). April 17. https://blog.ucsusa.org/kathy-mulvey/shell-inches-forward-on-climate-action/
[22] The Global Standard on Responsible Corporate Climate Lobbying. 2022. *Responsible climate lobbying: The global standard.* Online at https://climate-lobbying.com/

reflected in decisions by the financial community. Stronger steering by regulators and policy makers has the potential to close this gap."[23]

Community impacts clearly present a material financial, reputational, and legal risk to issuers and investors. Just a few examples include:

- Indigenous-led opposition to companies;
- asset retirement obligations (AROs);
- areas of deforested land within an issuer's value chain;
- decreased arability of farmland and availability of fresh water;
- risks due to heat waves that affect ability of personnel to safely work outdoors.

Our own research has uncovered tangible and immediate impacts on communities resulting from global warming. A recent UCS analysis[24] found that extreme heat could result in tens of millions of outdoor workers in the US losing a collective $55.4 billion in earnings each year by midcentury. Workers in California alone could lose nearly $3.3 billion in wages by 2065 from working in extreme heat. About 20 percent of the U.S. labor force works outdoors, with significant numbers of outdoor workers located in urban areas and outdoor workers comprising a larger share of the local economy in rural communities. These workers are largely unprotected as federal guidelines are only recommendations.

Another UCS report demonstrates the importance of the rule's requirement to disclose impairment charges. UCS research on the impacts of sea level rise to coastal communities shows that long before rising seas permanently submerge properties, millions of Americans living in coastal communities will face more frequent and disruptive high-tide flooding.[25] By the end of the century, under a high sea level rise scenario, approximately 2.5 million US coastal homes and commercial properties currently worth more than $1 trillion would be at risk from chronic flooding—a threshold we defined as flooding that occurs 26 times per year or more. By 2045, within the lifetime of a typical mortgage issued today, about 325,000 coastal properties worth $136 billion will be at risk of chronic flooding. The properties at risk by 2045 currently house 550,000 people and contribute nearly $1.5 billion toward today's property tax base.

For this reason, we support the SEC's proposed inclusion of disclosures by zip code which would allow identification of physical risk to assets or operations by location. Other examples of such risks include toxic plants in danger of damage from flooding, and assets in regions with high water stress, including climate-induced stress due to droughts.

Conclusion

This decade is decisive in determining the impact of climate change on future generations. Climate change is already harming people and the planet in immediate and tangible ways, and the IPCC says we need to cut global warming emissions roughly in half by 2030 to limit the worst effects of climate change. The science is clear: we can and must limit these risks by sharply cutting global heat-trapping emissions. While market-based policies will not be sufficient on their own, especially in addressing long standing racial and socioeconomic inequities exacerbated by climate change, it is critical to ensure robust market

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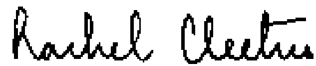
[23] IPCC. 2022. Climate Change 2022: Mitigation of Climate Change. Intergovernmental Panel on Climate Change. Online at https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_FinalDraft_FullReport.pdf

[24] Dahl, K. and R. Licker. 2021. *Too Hot to Work: Assessing the Threats Climate Change Poses to Outdoor Workers*. Cambridge, MA: Union of Concerned Scientists. https://doi.org/10.47923/2021.14236

[25] Dahl, K., Cleetus, R., Spanger-Siegfried, E., Udvardy, S., Caldas, A & Worth, P. 2018. *Underwater: Rising Seas, Chronic Floods, and the Implications for US Coastal Real Estate.* Cambridge, MA: Union of Concerned Scientists. Online at https://www.ucsusa.org/resources/underwater#ucs-report-downloads

rules aligned with the latest science and economics of climate change. Several federal agencies have emphasized the SEC's role in this effort: The Commodity Futures Trading Commission found in a 2020 report that existing SEC guidance on climate risk, while important, has not provided sufficient information to investors. The need for this rule is urgent, and the SEC must strengthen and finalize it as soon as possible. While government agencies can negotiate timelines, climate change operates on an accelerated timeline of its own.

Sincerely,



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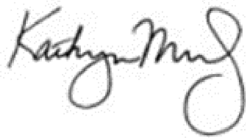

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