ACLI
Financial Security for Life

June 17, 2022

Via e-mail to rule-comments@sec.gov

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

Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors
Release Nos. 33-11042; 34-94478; File No. S7-10-22

Dear Ms. Countryman,

Thank you for the opportunity for the American Council of Life Insurers (ACLI)[1] to provide comments on the Notice of Proposed Rulemaking (NPRM) on the Enhancement and Standardization of Climate-Related Disclosures for Investors.

Executive Summary

Life insurers are significant long-term investors, with more than $7.7 trillion in invested assets. ACLI members are committed to working with policymakers and regulators to address climate-related issues. As experienced managers of long-term risks, life insurers are inherently interested and actively engaged in understanding how climate change may impact the risks they assume and the supporting investments they make.

ACLI has engaged with multiple state, federal and international agencies on climate change disclosures, climate-related financial risks, and regulatory developments. A summary of our engagement can be found in Appendix I. As multiple reporting frameworks are being developed and implemented across various jurisdictions, investors will benefit from a consistency in frameworks for disclosing material climate-related information.

ACLI members recognize the important role transparent disclosures play in allowing investors to make informed decisions and support efforts to improve disclosures. However, we have several significant concerns with the NPRM which are listed below with additional detail in the body of our letter.

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[1] The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 95 percent of industry assets in the United States.

Principles Based Approach

1. Any final rule should be principles based and allow adequate flexibility for companies to navigate the complexities and challenges that may exist when attempting to quantify specific impacts of climate related events.

Financial Metrics Disclosure

2. The financial metrics disclosure threshold is inappropriate, as it disregards the concept of materiality that is applied elsewhere in Regulation S-X.
3. Expenditure metrics will not provide decision-useful information to investors and other users.
4. All GHG emissions disclosure should be prospective.
5. Scope 3 disclosure should be required only if material to the business of the registrant.
6. Scopes 1 and 2 GHG disclosures for any given fiscal year should be furnished, or if material, filed, at least 180 days after the registrant's fiscal year-end.
7. Scope 1 and Scope 2 data should not be subject to a reasonable assurance attestation standard.
8. Any requirement for disclosure of scenario analysis should be limited to cases where climate change has been identified as a material risk to the business, require less detailed information than the SEC has proposed, and furnished rather than filed.
9. Disclosing the climate expertise of Board members is unlikely to be decision-useful information for investors.
10. Any target and goals disclosure should be voluntary unless material to the business of the registrant.
11. Disclosures should begin no earlier than three years following the implementation date (e.g.: 2024 reporting in 2025 for a December 2022 implementation date, with the reporting of comparative periods on a prospective basis, and delayed timelines for insurer disclosure of Scope 3 emissions.)

Materiality

12. The SEC should not deviate from existing Supreme Court definitions of materiality.

Data and Safe Harbor Protections

13. Data quality, availability and reliability continues to be an issue for registrants. Therefore:
    - The SEC should implement a phased in approach that would provide for furnished as opposed to filed data in the early years of disclosure, to allow data quality and model consistency to improve.
    - The safe harbor proposed, while necessary and appropriate, is insufficient to protect registrants from being held liable for errors or omissions arising from data issues beyond their control.

Applicability to Insurance products

14. The SEC should fully exclude from any final rulemaking life insurance companies issuing registered non-variable insurance contracts.

Additional Issues

15. Equity method investees' emissions should not be included in Scope 1 and Scope 2 emissions.

ADDITIONAL DETAILS

Principles Based Approach

Any final rule should be principles based and allow adequate flexibility for companies to navigate the complexities and challenges that may exist when attempting to quantify specific impacts of climate related events.

For example, the value of an investment may be impacted by a climate related event but also by other unrelated market conditions/entity specific events. Bifurcation of those impacts could be challenging, if not impossible, to quantify.

Financial Metrics Disclosure

Life insurance companies already provide financial regulators with material information on solvency, risk, and other financial metrics in order to foster transparency and provide investors with decision-useful information. As significant investors in U.S. markets, we support efforts to improve disclosures to help ensure investors have the relevant information they need to make prudent financial decisions. However, as issuers and asset owners, we are concerned the excessive granularity of the proposed requirements present challenges that create complexity that would outweigh the benefits to investors. In addition, many of the financial metrics disclosure proposals are currently inoperable either due to inconsistency with existing financial reporting rules, or lack of guidance as to how to implement the proposals.

The Financial Metrics Disclosure Threshold is Inappropriate

- The disclosure threshold, as proposed, is inappropriate, as it disregards the concept of materiality that is applied elsewhere in Regulation S-X and is more likely than not to require disclosure of climate related financial metrics at a level of detail that is not commensurate with their impact to the financial position and results of operations of an issuer. We believe that the climate-related impacts and expenditures should be expressly subject to the materiality standard in § 210.4-02. Reference to existing materiality guidance along with interpretive guidance in SAB No. 99, is preferable to a "bright line" disclosure threshold. Not only will this provide for disclosures that are more decision-useful, it will also increase comparability between issuers that file financial statements on a basis other than U.S. GAAP, since differences in classification and valuation between different bases of accounting may cause issuers to trigger the disclosure threshold under one basis of accounting and not another.

- As long-term investors, expenditure metrics will not provide decision-useful information to investors and other users, primarily because such information is unlikely to be comparable between issuers since such classification relies on the intent of the reporting entity. For example, a project to install energy-efficient lighting in a building owned by a reporting entity may be initiated as a cost-saving measure, irrespective of its climate impact. Other activities that have an ancillary positive impact on GHG emissions, such as transition to a mobile workforce or incentives to reduce waste production, may present similar difficulties. Comparability of climate-related expenditures will be further reduced where companies submit financial statements prepared on a basis other than U.S. GAAP. For example, NAIC Statutory Accounting Principles (SAP) has different capitalization requirements for certain assets. This may cause expenditures that meet the disclosure threshold when capitalized under U.S. GAAP not to trigger the disclosure threshold when expensed as incurred under SAP, since the expenditures would be assessed in reference to a larger pool of period expenses.

- The proposed location of the climate related financial metrics in a footnote to the audited financial statements is inappropriate. Financial impacts metrics should not be included in the audited financial statements. Under the proposed rules, financial statement metrics would be subject to audit by the registrant's independent registered public accounting firm and would fall within the scope of the registrant's internal control over financial reporting ("ICFR"). However, estimates of the proportion of financial metrics that may be attributable to climate change are not currently derived from the systems or processes used to record and report financial data in a registrant's financial statements and it would be unduly burdensome and costly to subject these metrics to ICFR.

- The SEC should consider allowing reporting under non-U.S. jurisdictional and international reporting frameworks. It is important for the SEC to avoid burdening non-U.S. registrants with redundant reporting requirements. For example, the SEC allows foreign private issuers to fulfill SEC financial reporting obligations by using IFRS reporting instead of U.S. GAAP. In concept, there is little reason why a similar approach should not be followed for climate disclosure. The creation of the ISSB and the global trend toward a common platform of TCFD and GHG Protocol creates a meaningful opportunity for the SEC to permit alternative frameworks. Nevertheless, parts of the SEC proposal-particularly the financial statement requirements-go well beyond the provisions of ISSB and TCFD. Therefore, the SEC must first ensure that its requirements reasonably align with international frameworks in a manner such that the SEC's stated goals can be achieved by reporting under these frameworks.

- The quantitative financial statement footnote disclosure should be limited to certain sectors (e.g., energy), with the insurance sector excluded from applicability. The SEC appears to presume that climate-related risks can be disaggregated from other risks. The business of insurance, however, involves the professional management of various insurance risks. Climate change and possible responses to address it can be viewed as one of several macro trends that influences insured risks. Therefore, the effects of climate are inevitably embedded within the existing scope of risks underwritten and assumed by insurers and, in most cases, cannot be reliably disaggregated. For insurance, it is difficult to see how the benefits of the SEC's proposed line-by-line disaggregation of climate effects in a financial statement footnote will outweigh the costs and time of tracking and preparing such information, to the extent that is even possible. Most figures would involve large amounts of judgement, and it is likely that decision-useful information would not be obtainable.

- Issuers should not be required to disclose identified physical risk at the postal code level. For companies with sizable real estate portfolios, this level of granularity would be extremely burdensome from a compliance perspective – if available or accessible for all investment holdings to begin with - and go significantly beyond a <u>substantial likelihood</u> that a reasonable user of the financial statements would consider important.

GHG Emissions Disclosures Generally

- All GHG emissions disclosure should be prospective. It is unduly burdensome to require issuers to compile GHG emissions data for periods that have already occurred or are currently in progress.

Scope 3 Disclosures

- We understand the ambitious efforts the SEC is undertaking to identify all sources, whether direct or indirect, of greenhouse gas emissions. However, compliance with the Scope 3 disclosure requirements, as proposed, may be impossible from a practical perspective due to current data limitations, including the absence of data and standards. Additionally, the rule as proposed applies only to public companies. Therefore, issuers would not have access to data on the exposure of private companies to climate related financial risks. As outlined in more detail below, Scope 3 disclosure should be required only if material to the business of the registrant, and should be furnished vs filed at least for an initial transitional period. Consideration can later be given to expanding disclosure based on market needs, materiality, and the ability to reliably measure Scope 3 emissions. We provide additional support for our position below.

    - Scope 3 GHG emissions reporting is currently the most complex and least reliable. There is currently no agreement on standards for measurement of Scope 3 emissions, and complex value chains typically comprise numerous companies of whom many have no obligation to report, even under the NPRM. Much of the available data is based on estimations and models as yet under development and of thus would likely be of limited value to investors.

    - Of the 15 categories of upstream and downstream Scope 3 emissions, not all 15 categories are going to be applicable in all instances, and for all industries, let alone available, at least in the near term. In addition, as outlined above, measurement metrics and ownership and control boundaries have as yet to be satisfactorily addressed and agreed.

    - Another significant concern with the proposed Scope 3 requirements is the challenge of reporting Scope 3 emissions related to insurers' sizable investment activities. ACLI members invest in a broad range of asset classes including public debt, public equity, sovereigns, municipals, local authorities, private corporate debt, private equity, hedge funds, commercial real estate, residential real estate, agricultural loans, infrastructure, securitized products backed by various types of collateral, etc. Reporting emissions related to these investments requires both a clear methodology and reliable data. While the NPRM points to use of the Partnership for Carbon Accounting Financials' (PCAF) Global GHG Accounting and Reporting Standard and the asset classes the PCAF has addressed to date, it is silent regarding expectations for the broader universe of assets financial registrants invest in. Further, the NPRM also does not acknowledge that, while PCAF standards may exist for 6 asset classes, reliable data for these classes does not. In addition, for asset classes data is currently available for, the information financial registrants receive may be based in part on estimated information.

- As stated above, these realities necessitate a more phased approach to disclosure of scope 3 financed emissions than the SEC has put forward in the NPRM. Specifically, the disclosure requirement should be determined by materiality to the registrant's business, with applicability to financial registrants deferred to allow time for companies they rely upon for information to comply with the proposed requirements, to refine existing infrastructure and build new processes where needed. The phase in approach should be sensitive to the developmental nature of standards for reporting financed emissions. For example, a clear and reasonable timeline for phasing in disclosure requirements for an asset class following finalization of the relevant PCAF standards would help ensure there is time for registrants to assess, procure, understand data and establish the necessary infrastructure to meet the disclosure requirements.

SAB No. 99

- The requirement to report Scope 3 emissions should be revised to reflect a risk-focused view. That is, emissions disclosures should be required only when such amounts are identified as a material risk to the registrant. While the concept of materiality and the application of SAB No. 99 is well understood in the context of financial metrics, it is not clear how such an assessment would be applied to Scope 3 emissions.

- Implicit in an assessment of materiality under SAB No. 99 is the ability to quantify the item(s) being assessed. As noted above, unlike Scopes 1 and 2 emissions, the methodologies and source data for Scope 3, particularly as it relates to the assets and liabilities of life insurers, are much less mature. The inability of life insurers to measure Scope 3 emissions accurately and consistently is likely to reduce both the decision-usefulness of such information, if disclosed, and its value as an input to the assessment of materiality.

Use of US GAAP "Reasonably Estimable" Concept

The application of the qualitative elements of materiality assessment are also problematic, as GHG emissions are generally distinct from the financial performance of a reporting entity.

To help address this issue, we recommend that the concept of "reasonably estimable," which exists in current U.S. GAAP reporting with respect to the measurement of contingencies, be applied to Scope 3 emissions, and that the guidance be clarified to require the disclosure of Scope 3 emissions a) if reasonably estimable and b) if the impact of identified climate-related risks are determined to be material to the financial position or operations of a reporting entity.

We disagree with the requirement for an issuer to disclose how it determined Scope 3 emissions were not material in cases where such a conclusion was reached.

Value Chain and Underwriting Activity Emissions

- For many companies, particularly in the insurance industries, there is no existing framework to capture the emissions of significant underwriting activities in the value chain.

Scopes 1 and 2 Disclosures

- Given timing of release of information by third parties insurers are reliant upon, data required to report Scopes 1 and 2 emissions will largely not be available until sometime after the end of a registrant's fiscal year. For this reason, and to allow time for appropriate validation of data, ACLI members suggest that Scopes 1 and 2 GHG disclosures for any given fiscal year be furnished, or if material filed, at least 180 days after registrant's fiscal year end.

- Under the proposed rules for large, accelerated filers, Scope 1 and 2 GHG would be subject to limited assurance attestation in the second year of disclosure and reasonable assurance in the fourth year of disclosure. ACLI believes reasonable assurance should not be required. Failing this, the timeline for progression from limited to reasonable should be longer. Support for our position follows.

- As many of the allowable methods for estimating GHG emissions are imprecise, it is unreasonable to subject this information to attestation. The proposed rule states that the attestation standard used must be "publicly available at no cost and have been established by a body or group that has followed due process procedures" and suggests AICPA attestation standards as one example. The proposed rule also makes it clear that "limited assurance" is akin to a review engagement and "reasonable assurance" is akin to an audit. But an auditor can only issue an opinion by evaluating a registrant's financial metrics, disclosures and controls to established criteria. For audits of financial statements, the established criteria are the generally accepted accounting principles in the U.S. and for audits of internal controls over financial reporting, the generally established criteria are within the integrated framework issued by The Committee of Sponsoring Organizations of the Treadway Commission (COSO). For climate-related disclosures, however, reporting standards are not yet fully developed enough to establish criteria for how to measure greenhouse gas emissions or how to quantify other financial metrics such as estimating the amount that climate change has exacerbated the effect of extreme weather events on various financial statement line items. While the GHG protocols have recommended that companies follow standards of the PCAF for measuring greenhouse gas emissions, those standards do not cover all asset classes including investments in private equity and limited partnerships for which Scope 1 and Scope 2 GHG data is required under the proposed rules. In addition, requiring attestation is a significant and unnecessary cost that will be passed onto consumers. As the SEC noted in the NRPM, although a limited assurance engagement provides a lower level of assurance than a reasonable assurance engagement, studies of ESG-related assurance, which is typically provided at a limited assurance level, have found benefits such as credibility enhancement, lower cost of equity capital, and lower analyst forecast errors and dispersion.[2] Given the concerns we identified related to obtaining reasonable assurance, and the SEC's observations regarding the effectiveness of a limited assurance, we recommend that Scope 1 and 2 disclosures only be subject to limited assurance.

- The assurance timeline is unreasonable. The SEC should recognize that the understanding, assessment, measurement, and reporting of climate risk is at an early stage. Audit and attestation requirements should not get ahead of the industry's capacity

[2] NPRM at pg. 255.

to provide auditable and attestation-worthy information. At a minimum, we believe that the two fiscal year transition period between limited assurance and reasonable assurance should be extended to at least five years.

Scenario Analysis

- Any final rule should require scenario analysis disclosure be high level, voluntary and furnished vs filed. Support for our position follows.

    - It is important for registrants to provide insight to investors on risks that may impact the financial performance of the company and to discuss risks determined to be material at a greater depth than those determined to be immaterial. However, we disagree with the SEC's proposal to require a registrant to disclose detailed information regarding scenario analysis based on a binary decision of whether a company chooses to undertake such work or not. As we have noted elsewhere in our response, climate-related disclosures – including any discussion on scenario analysis a company has undertaken – should be limited to instances where the registrant has identified a material risk exposure. Further, ACLI members have concerns with the type of information the SEC has proposed be encompassed in the disclosure – e.g., parameters of scenarios considered, assumptions, and analytical choices, and the projected principal financial impacts, etc. – as such details may be proprietary in nature.

    - Insurers are well-versed in the design and use of scenario analysis. However, the SEC proposal assumes a level of maturity of climate-risk scenario analysis that is not consistent with current state. What is more, granular details of scenario analysis as described above are of questionable use to the average investor and input and results of scenario analysis often contain sensitive, proprietary data that is usually kept confidential and only shared with prudential regulators.

    - As importantly, insurers are still developing their scenario analysis capabilities in this area and this work is subject to the same data limitations and challenges we have noted elsewhere in our response. Further, any consideration of how a company will be impacted over the short, medium, and long-term will be based on company specific assumptions that may be largely speculative in light of the inherent uncertainties with how key variables will unfold (e.g., what actions policy makers will or will not take, the pace and breadth of technological developments, etc.). These realities will undermine the decision usefulness of such disclosures to investors. Further, given varying levels of expertise across companies and the bespoke nature of scenarios explored, scope of what may be included in the analysis, assumptions made, etc. will not be comparable.

- Any requirement for disclosure of scenario analysis should be limited to cases where climate change has been identified as a material risk to the business, require less detailed information than the SEC has proposed, and furnished be rather than filed.

- Finally, while we are involved with efforts of bodies like the Network of Central Banks and Supervisors for Greening the Financial System (NGFS) to advance thinking in the field of scenario analysis, we strongly disagree with the SEC's consideration of requiring companies to follow prescribed publicly available models. While prescribing parameters may promote comparability, the analysis would still be subject to significant assumptions, data gaps, and varying levels of expertise across companies and could yield results that undermine analytical integrity and are less decision useful than assessments companies tailor to account for specificities of their business,

Board Member Expertise

- Disclosing the climate expertise of Board members and frequency of discussion is unlikely to be decision-useful information for investors. Unless climate change has been identified as a material risk, such expertise is unlikely to be critical to the oversight of a company. Further, it is reasonable for the Board to rely upon and leverage requisite subject matter expertise that resides within the company and can be accessed as may be needed through expert advisors.

Targets and Goals

- Any target and goals disclosure should be voluntary unless material to the business of the registrant. Expectations for targets and goal disclosure are unclear. As strategy development tools, targets and goals are likely to be adjusted as knowledge of climate pathways, new technology and means of addressing and assessing climate change improve, making information currently available of questionable value to investors. Further, a binary approach of requiring disclosure in cases where a target has been set would likely dampen the private sector's appetite for setting climate related targets and goals.

Implementation Timeline

- The proposed timeline for implementation is insufficient. It will take considerably more time than the SEC has proposed for ACLI members to address policy setting, definitions, training, internal controls, data completeness, model development, accounting, and reporting process build-out, reporting analysis and audit / attest requirements. In order to comply with the proposed requirements registrants will be required to refine existing processes and build new processes where needed. As with any material change in process, Companies will need time to test enhancements to internal controls over financial reporting.

- Therefore, a final rule should require disclosure beginning no earlier than three years after issuance, (e.g.: 2024 reporting in 2025 for 2022) with the reporting of comparative periods on a prospective basis and delayed timelines Scope 3 emissions to allow time for investee company and third-parties information to be received/reported to by registrants. Additionally, an option to decline and explain would be important where, for example, mortgage lender registrants cannot obtain information given that borrower property owners are not required to provide data.

Materiality

- In the NPRM, the SEC states, "The materiality determination that a registrant would be required to make regarding climate-related risks under the proposed rules is similar to what is required when preparing the MD&A section in a registration statement or annual report.

The SEC's rules require a registrant to disclose material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results or of future financial condition."[3]

- In 1988 the Supreme Court, in Basic v. Levinson, held that a fact is material, "if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote."[4] The Supreme Court continued, however, by cautioning that "too low a standard of materiality [. . .] might bring an overabundance of information within its reach, and lead management "simply to bury the shareholders in an avalanche of trivial information—a result that is hardly conducive to informed decision making."[5] The Court concluded that "there must be a <u>substantial likelihood</u> that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."[6]

- ACLI suggests that the SEC's proposal is inconsistent with this standard. In the NPRM, the SEC writes, "Moreover, registrants must bear in mind that the materiality determination is made with regard to the information that a reasonable investor considers important to an investment or voting decision".[7] A more proper articulation of a standard would be, "Moreover, registrants must bear in mind that the materiality determination is made with regard to the information <u>about which there is a substantial likelihood</u> that a reasonable investor considers important to an investment or voting decision."

- Registrants should only be required to disclose data that is material to their business. In this respect, the disclosure threshold for reporting climate related financial impacts and expenditures is inappropriately low and well below the level at which there is a substantial likelihood that a reasonable user of the financial statements would consider such information important. As a result, the disclosures are likely to add significant reporting burden and expense with comparatively little benefit to investors and other financial statement users.

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[3] NPRM at pg. 65, referencing 17 CFR § 229.303
"(Item 303) Management's discussion and analysis of financial condition and results of operations.
(a) Objective. The objective of the discussion and analysis is to provide material information relevant to an assessment of the financial condition and results of operations of the registrant including an evaluation of the amounts and certainty of cash flows from operations and from outside sources. The discussion and analysis must focus specifically on material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This includes descriptions and amounts of matters that have had a material impact on reported operations, as well as matters that are reasonably likely based on management's assessment to have a material impact on future operations. The discussion and analysis must be of the financial statements and other statistical data that the registrant believes will enhance a reader's understanding of the registrant's financial condition, cash flows and other changes in financial condition and results of operations. A discussion and analysis that meets the requirements of this paragraph (a) is expected to better allow investors to view the registrant from management's perspective.
[4] Basic v. Levinson, 485 U.S. 224 (1988), at 231, quoting TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976) at 449.
[5] Basic v. Levinson, 485 U.S. 224 (1988), at 231-232, quoting TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976) at 448-449.
[6] Basic v. Levinson, 485 U.S. 224 (1988), at 231-232, quoting TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976) at 449 (emphasis added).
[7] NPRM at 66.

Data and Safe Harbor Protections

The SEC should implement a phased in approach that would provide that all climate-related requirements should be furnished under Regulation S-K and not filed under Regulation S-X, at least in the early years of disclosure, and afforded all liability protections available under Regulation S-K. Support for our proposal follows.

The proposed reporting framework presumes a level of availability of reliable data that does not reflect current state. In some cases, in particular for Scope 3 GHG emissions, the data that is necessary for reporting does not yet exist, is unavailable, or if available based on estimates and assumptions and of questionable reliability, and in some cases not available in time to be incorporated into current disclosures. This raises concerns that companies reporting in good faith may be held liable for errors and omissions beyond their control.

Given that the SEC's objective is to "provide investors with consistent, comparable, and decision-useful information for making their investment decisions", encouraging provision of data is important. Therefore, as stated above, ACLI urges the SEC to adopt an approach that recognizes the current state of data availability and promotes continued disclosure to allow data sets to mature. Specifically, consistent with our proposal above, ACLI suggests the SEC should implement a phased in approach that would provide that any and all climate-related disclosure requirements should be furnished under Regulation S-K, and Regulation S-K Item 1504(f) Safe Harbor extended to all climate related data.

Additional comments are:

- The phase in of the disclosure requirement should vary by both size of the registrant and industry. The ability for ACLI members to comply with the requirements, as proposed, will be heavily influenced by their ability to obtain information from third parties (e.g., vendors, the issuers of securities they invest in, etc.) that will themselves need time to develop the capability to report required information.

- A safe harbor should facilitate meaningful, accurate and detailed disclosures and metrics. In the NPRM, the SEC states, "To the extent that the proposed climate-related disclosures constitute forward looking statements, as discussed below, the forward-looking statement safe harbors pursuant to the Private Securities Litigation Reform Act ("PSLRA") would apply, assuming the conditions specified in those safe harbor provisions are met.[8] In a footnote, the SEC notes that the forward looking statement protections, "by their terms do not apply to forward-looking statements included in financial statements prepared in accordance with generally accepted accounting principles ("GAAP").[9] This is insufficient for a proposed set of Rules that are seeking disclosures of possible risks that may or may not occur over "the short, medium, and long term."

- The proposed safe harbor provisions that provide only limited protection for scope 3 emissions are insufficient to encourage the extent of reporting required to improve data,

[8] NPRM at pp 66-67.
[9] NPRM, footnote 219 at pg. 67.

transparency and respond to investor needs. The Release points to the PSLRA for forward-looking statement protection, which is not adequate because it does not cover disclosures that are not forward looking, and does not cover forward-looking statements in the financial statements. Additionally, we are concerned that the current safe harbor would not cover IPO registration statements.

Applicability to Issuers of Insurance Products

The SEC should fully exclude from any final rulemaking life insurance companies issuing registered non-variable insurance contracts, including registered index-linked annuities (RILAs), market value adjustment contracts (MVAs), contingent deferred annuities (CDAs), and registered index-linked universal life insurance policies (RILs). Currently, such contracts cannot be registered on the SEC's variable annuity or variable life registration forms (i.e., Forms N-3, N-4 and N-6). Instead, insurers must use the SEC's default registration forms (Forms S-1 and S-3), which are designed for and tailored to offerings of equity and debt securities, not insurance contracts. We believe the required disclosures could be detrimental, to potential and existing contract owners. In addition, the compliance costs imposed on life insurance companies would far outweigh the benefits (if any) to the public and may discourage life insurance companies from offering such contracts in the future.

Under the NPRM, life insurance companies issuing non-variable insurance contracts registered on Form S-1 or Form S-3 would be subject to the proposed climate-related disclosures. This is due to the fact that the SEC is broadly "proposing to require a registrant to include climate-related disclosure in Securities Act or Exchange Act registration statements (Securities Act Forms S-1, F-1, S-3, F-3, S-4, F-4, and S-11, and Exchange Act Forms 10 and 20-F) and Exchange Act annual reports (Forms 10-K and 20-F), including the proposed financial statement metrics." We believe the SEC should amend the scope of the rulemaking to exclude (i) all registration statements for offerings of registered non-variable insurance contracts and (ii) all reports filed by life insurance companies pursuant to Section 15(d) of the Exchange Act, provided that the life insurance company's reporting obligation arises solely from the registration of one or more insurance contract offerings under the Securities Act.

By giving the NPRM such a broad scope, the SEC unintentionally sweeps into the proposal life insurers that issue registered non-variable insurance contracts but are otherwise private companies. This would have the effect of subjecting privately-owned insurance companies to disclosure requirements that are intended for public companies. This is inconsistent with the stated purpose of the proposed rule, which is "to require disclosures about climate-related risks and metrics reflecting those risks because this information can have an impact on public companies' financial performance." The Economic Analysis section of the NPRM suggests that inclusion of private life insurers is not the SEC's intended outcome.[10]

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[10] NPRM at 729: FPIs refer to the subset of all FPIs that file annual reports on Form 20-F, excluding MJDS filers using form 40-F. The number of domestic registrants and FPIs affected by the final amendments is estimated as the number of unique companies, identified by Central Index Key (CIK), that filed a Form 10-K, Form 20-F, or an amendment thereto, or *both a Form 10-Q and a Form S-1, S-3, S-4, or S-11* with the Commission during calendar year 2020, excluding asset-backed securities issuers. For purposes of this economic analysis, these estimates do not include registrants that only filed a Securities Act registration statement during calendar year 2020, or only filed a Form 10-Q not preceded by a Securities Act registration statement (in order to avoid including entities such as certain co-issuers of debt securities). We believe that

Regardless of the SEC's intent with respect to the NPRM, life insurers issuing non-variable insurance contracts should be exempt from the rulemaking, because potential and existing contract owners do not need, and would not benefit from, the proposed climate-related disclosures. Most importantly, the proposed disclosures are immaterial to potential and existing contract owners. The disclosures would not provide "decision-useful" information to contract owners, whose financial interests are in the insurance guarantees and benefits of their contracts, not the financial performance and future prospects of the insurance company issuers. While an insurance company's financial obligations under a contract are subject to the company's financial strength and claims-paying ability, there isn't a compelling need for climate-related financial disclosures, as life insurance companies are subject to strict regulation at the state level that significantly reduces the risk of default and generally ensures a stable insurance market for consumers. Overall, none of the proposed climate-related disclosures are material to an investor's decision to buy or put more money into an insurance contract.

Furthermore, the proposed climate-related disclosures could be detrimental to potential and existing contract owners. When a life insurance company offers a registered non-variable insurance contract, the product-related disclosures are critical, as they describe the material terms and risks of the contract. However, the company-related disclosures prescribed by SEC rules have little value. They are voluminous and go far beyond what is necessary to convey material information about the insurance company. Nevertheless, contract owners are tasked with reading and understanding extensive company disclosures, distracting them from the product disclosures, which should be their focus. The proposed climate-related disclosures could become the most voluminous and complex company disclosures to be required by the SEC. As such, it's likely that contract owners would be bogged down by the lengthy, complicated, and ultimately immaterial climate-related disclosures, and be even less likely to focus on the product disclosures that should be central to their investment decisions.

- It is also important for the SEC to consider that the compliance costs imposed on life insurance companies would far outweigh the benefits (if any) to the public and may discourage life insurance companies from offering registered non-variable insurance contracts in the future. In order to comply with the proposal, life insurance companies would need to incur significant compliance costs related to, e.g., hiring new employees, dedicating employee time to compliance, instituting new policies and procedures, retaining climate risk experts, and expanding auditing engagements. These costs would far outweigh the benefit to the public, as there would be little to no such benefit for the reasons previously discussed. In addition, these compliance costs would likely discourage life insurance companies from offering registered insurance contracts in the future, and could cause some life insurance companies to withdraw from the market, as compliance with the ill-fitted disclosure framework may be economically unviable for life insurance companies.

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most registrants that have filed a Securities Act registration statement or a Form 10-Q not preceded by a Securities Act registration statement, other than such co-issuers, would be captured by this estimate. The estimates for the percentages of SRCs, EGCs, accelerated filers, large, accelerated filers, and non-accelerated filers are based on data obtained by Commission staff using a computer program that analyzes SEC filings, with supplemental data from Ives Group Audit Analytics and manual review of filings by staff. (emphasis added)

Additional Issues

Equity Method Investees' Emissions

Equity method investees' emissions should not be included in Scope 1 and Scope 2 emissions, or, if required, should be limited to those equity method investees where the registrant exercises significant influence. ACLI member companies have significant portfolios of investments in limited partnerships and other alternative investments accounted for under the equity method given SEC guidance that requires use of the equity method with as little as 3% to 5% ownership. As such, GHG data from these investments is not representative of emissions within a reporting entity's control.

Under current SEC guidance, registrants must apply the equity method to investments in most limited partnership and alternative investments even though in many cases the registrant's interest in those entities is typically well below 20%. Per the guidance referred to in ASC 323-30-S99-1, the SEC requires that the equity method of accounting be applied to investments with ownership interests greater than 3-5% in certain partnerships, unincorporated joint ventures, and limited liability companies. The SEC staff has indicated that the equity method is appropriate for these investments unless an investor's interest has virtually no influence over operating and financial policies of the investee. Insurance companies typically have a significant portfolio of these types of investments. The vast majority of the investees are funds comprising portfolios of numerous small, private entities that would have an extremely difficult time compiling emissions data.

The process required to compile and estimate of these investees' emissions would necessarily be based on proxy data and would not be representative of emissions within a reporting entity's control. If the SEC believes emissions of equity method investees must be disclosed, then it is more appropriate to include such disclosures in Scope 3, which is consistent with existing GHG frameworks.

The definition of organizational boundaries should be modified to be consistent with the approaches permitted under the GHG Protocol and should not require issuers whose reporting is compliant with the GHG Protocol to change their methodology in order to comply with the new disclosures. The GHG Protocol is among the most internationally accepted standards and any deviation would reduce comparability of these disclosures with other jurisdictions.

At the very least, the requirement to report Scope 1 and Scope 2 GHG for equity method investees should be limited to those equity method investees where the registrant exercises significant influence.

Form 40-F Should Not Be Amended

ACLI believes it is not necessary to require Form 40-F issuers to comply with proposed climate-related disclosure requirements. It is vital for investors to have access to a single climate-related disclosure, rather than a patchwork that increase the burden of incorporating climate-related information into investing decision-making. In addition, the Canadian Securities Administrators has already announced its intention to incorporate TCFD-aligned disclosures in regulatory filings for all public companies. For these reasons we urge the SEC to allow Canadian issuers that report under the MJDS to comply with Canadian climate-related disclosure requirements and to make any compliance with SEC rules strictly voluntary for MJDS filers.

Conclusion

ACLI seeks a phased-in approach for implementation, with built-in protection for legal liability. This will allow investors ample time for development and to disclose material information in a safe and confident manner. Given historical period disclosure, we request a phase in that would begin no earlier than three years from the effective date and incorporate delayed filing for both investments and Scope 3 emissions to allow time for investee company and third-party investment and Scope 3 disclosures to be received/reported by registrants.

We understand the SEC has obligations to protect investors, maintain fair, orderly, and efficient markets and facilitate capital formation, but in its current form, the NPRM is cumbersome, costly to implement, does not reflect the reality of the data constraints companies face and lacks important detail companies need to fully assess its feasibility and appropriateness. It is important that the rulemaking is modified to address these significant concerns. We appreciate the opportunity to provide comments and stand ready to assist the SEC as this rulemaking is finalized.

Very truly yours,

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Appendix I

Background Information on ACLI Regulatory Engagement

In June of 2021, ACLI sent a letter to Chair Gensler in response to the Request for Public Comment on Climate Change Disclosures. In that letter, we requested that:

- Any new requirements for climate related disclosure be principles-based, market-driven and subject to materiality thresholds;
- The SEC prioritize work on addressing foundational elements (e.g., definitions and taxonomies) that would enhance the ability for companies to disclose information;
- Given the evolving nature and understanding of climate change, any new requirements be phased in over time and have robust safe harbors to shield companies from potential legal liability;
- Any new requirements and related implementation timelines be industry specific; and
- The U.S. be engaged in international discussion on climate change disclosure and the development of related frameworks and standards.

ACLI also had the opportunity to provide input to the Federal Insurance Office (FIO) with their Request for Information on Climate-Related Financial Risk. In our November 2021 letter, we emphasized that it is important that the FIO:

- Consider the climate-related work the National Association of Insurance Commissioners (NAIC) and state regulators are undertaking.
- Work with relevant standard-setting organizations and governmental entities to promote greater understanding of the specificities of the U.S. financial system and the U.S. life insurance market and ensure these features are accounted for in the development of climate related standards and regulations.
- Monitor the extent to which climate-related efforts affect traditionally underserved communities and consumers' access to affordable life insurance products.[11]
- Engage with the industry directly and via investor meetings (e.g., the Federal Advisory Committee on Insurance (FACI) to understand the challenges and opportunities that climate-related risks present.
- Advocate for harmonized, principles-based global standards and tools that adequately account for specificities of the US insurance market (e.g., approaches to elements such as definitions, taxonomies, disclosures and scenario analyses, as appropriate).

Notably, the NAIC recently adopted a revised Climate Risk Disclosure Survey which now aligns with the Task Force on Climate-Related Financial Disclosures (TCFD) recommendations.

[11] We note that the Financial Stability Oversight Council's October 21, 2021 "Report on Climate-Related Financial Risk" (FSOC Report) recommends FSOC "Understand and address adverse impacts on financially vulnerable populations." FSOC Report at 120. The report continues, "Addressing the impacts of climate change on financially vulnerable populations will require a coordinated approach involving stakeholders across the public and private sector to develop thoughtful and balanced policy responses." FSOC Report at 120. ACLI members stand ready to be a constructive partner in this coordinated approach.

In April 2022, the ACLI, directly and through the Global Federation of Insurance Associations (GFIA), recommended to the International Association of Insurance Supervisors (IAIS) and global insurance regulatory community that Supervisors:

- Acknowledging the nascent state of scenario analysis and data availability and the lack of models creating consistent decision useful information.
- Calling for principles-based approaches that adequately recognize the need for scenario analysis to appropriately account for differences in insurers' business models.
- Recognize different industry sectors' vastly different exposures to climate risk and vastly different ways in which climate risks could manifest.
- Seek uniform and consistent definitions. For example, the phrase 'scenario analysis' which can mean different things depending on the timescale being considered. [12]

As you can see from the above, there are a number of climate-related regulatory developments that will directly impact long term investors such as ACLI members, and may conflict with the proposals under the NPRM creating reporting inconsistencies and unnecessary complexities.

[12] As the SEC knows, a successful supervisory tool used by insurance supervisors is the Own Risk Solvency Assessment (ORSA). This covers a very short-term (3 year) forecast of potential financial impacts of a very tightly prescribed and controlled 'scenario'. This is quite different to a medium- to long-term scenario analysis called for in the NPRM and the TCFD recommendations which is looking to understand the potential strategic implications of climate risk over 10 to 30 years. Longer-term analysis requires a completely different set of assumptions and modelling approach.