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New York State Insurance Fund

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Via Internet Comment Form

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

Re: File Number S7-10-22
Comments on "The Enhancement and Standardization of Climate-Related Disclosures for Investors" (March 21, 2022)

Dear Ms. Countryman:

The New York State Insurance Fund ("NYSIF") welcomes the opportunity to comment on the Commission's above-referenced proposed rule (the "Proposal")[1] aimed at enhancing and standardizing climate-related disclosures to facilitate investor decision-making. NYSIF is a not-for-profit, competitive insurance company with a statutory mandate to (1) provide low-cost workers' compensation, disability, and paid family leave coverage, (2) pay timely benefits to claimants, and (3) maintain a solvent insurance fund.[2] NYSIF fulfills these obligations as a fiduciary, in part, by investing its premium income in diverse asset classes to generate a return.[3] NYSIF evaluates climate-related exposures as part of its investment diligence and is committed to achieving net zero carbon emissions in its investment portfolio by 2040.

As the global economy transitions to a less carbon-intensive model, the well-documented investor demand[4] for climate-related data has grown substantially and remains unmet.[5] To the extent companies release any climate impact information, they do so outside Commission filings,

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[1] The Enhancement and Standardization of Climate-Related Disclosures for Investors 21334 SEC, 87 Fed. Reg. 21334 (April 11, 2022), https://www.govinfo.gov/content/pkg/FR-2022-04-11/pdf/2022-06342.pdf

[2] *See*, N.Y.S. Workers' Compensation Law, Article VI, https://law.justia.com/codes/new-york/2018/wkc/article-6/

[3] NYSIF is the largest workers' compensation insurer in New York State and among the 10 largest nationwide. It has approximately $21 billion in invested assets. To learn more about NYSIF, visit https://ww3.nysif.com/Home/FooterPages/Column1/AboutNYSIF

[4] *See e.g.*, The Institutional Investors Group on Climate Change, Global Investor Statement to Governments on Climate Change—2021 Update, Sept. 14, 2021, https://www.iigcc.org/resource/global-investor-statement-to-governments-on-the-climate-crisis-2021-update/

[5] *See* International Organization of Securities Commissions, Report on Sustainability-Related Registrant Disclosures, June 2021, https://www.iosco.org/library/pubdocs/pdf/IOSCOPD678.pdf

which means the disclosure comes without essential investor protections.[6] With no concrete standards, information is often incomplete and inconsistent across companies and may not include critical components, including methodologies, data sources, and assumptions.[7] Consequently, investors frequently must rely on incomplete, unreliable, modeled data or estimates from multiple third-party data providers, expending precious time and resources for only a hazy picture of their investment holdings. The lack of information impairs investors' ability to make investment or voting decisions and unnecessarily increases investor costs. A recent survey revealed that "institutional investor respondents spend an average of $1,372,000 annually to collect, analyze, and report climate data to inform their investment decisions" with the "most common area of spend on ESG ratings, data providers, and consultants."[8]

The proposed rule would address these challenges by requiring all SEC registrants ("companies") to release consistent, comparable, and decision-useful information on climate-related risks[9] and metrics in their financial statements.[10] In doing so, the Proposal would empower investors with the information necessary to facilitate sound investment and voting decisions, reduce investor costs, and increase efficiency in capital allocation. The Proposal would also enhance price discovery, fostering market competition and efficiency. NYSIF strongly supports the overall purpose of the Proposal but believes the Commission should strengthen certain vital elements to ensure a more comprehensive and robust disclosure.

The Proposal's Key Elements

Drawn from the Task Force on Climate-Related Financial Disclosure ("TCFD") recommendations,[11] the Proposal would require companies to disclose information about climate-related risks, including physical and transition risks,[12] as part of their registration statements and

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6 Proposal, at 21335.

7 *Id.*

8 Mark Lee, Emily K. Brock, and Doug MacNair, The Sustainability Institute by ERM, *Costs and Benefits of Climate-Related Disclosure Activities by Corporate Issuers and Institutional Investors*, https://www.sustainability.com/globalassets/sustainability.com/thinking/pdfs/2022/costs-and-benefits-of-climate-related-disclosure-activities-by-corporate-issuers-and-institutional-investors-17-may-22.pdf; *See also*, Robert G. Eccles, The Benefits And Costs of Climate-Related Disclosure Activities For Companies And Investors, Forbes, May 18, 2022, https://www.forbes.com/sites/bobeccles/2022/05/18/the-benefits-and-costs-of-climate-related-disclosure-activities-for-companies-and-investors/?sh=6a7d4bf84f89

9 Under the Proposal, "climate-related risks" means the actual or potential negative impacts of climate-related conditions and events on a registrant's consolidated financial statements, business operations, or value chains, as a whole. Proposal, at 21465.

10 Supra, note 6.

11 The Task Force on Climate-Related Financial Disclosure was established by the G20's Financial Stability Board "to develop information on the types of information that companies should disclose to support investors, lenders, and insurance underwriters in appropriately assessing and pricing a specific set of risks—risks related to climate change." https://www.fsb-tcfd.org/about/

12 The Proposal defines ''climate-related risks'' as the actual or potential negative impacts of climate-related conditions and events on a registrant's consolidated financial statements, business operations, or value chains, as a whole. It defines ''Physical risks'' to include both acute and chronic risks to a registrant's business operations or the

Exchange Act annual reports.[13] Disclosures would detail a company's climate-related risk oversight and governance, impact on business activity, and the process for identifying, assessing, and managing such risks.[14] For an identified physical risk, the Proposal would require a description of such risk and the location by zip code of properties, processes or operations subject to the physical risk.[15] The Proposal would also require companies to disclose their Scope 1 and 2 greenhouse gas ("GHG") emissions[16] in both disaggregated form (broken out by component GHG emissions) and aggregated form, as well as in absolute terms, without offsets, and in terms of intensity.[17] An attestation of reasonable assurance would accompany Scope 1 and 2 data for accelerated and large accelerated filers.[18]

Scope 3 GHG emissions[19] and intensity would also be required under the Proposal, but only if material or if the company has set a GHG emissions target that includes Scope 3 emissions.[20] Finally, companies would have to disclose their transition plans, targets, and goals, if any, including carbon offsets and renewable energy certificates, and their progress toward those objectives.[21] Acknowledging that calculating Scope 3 emissions can be challenging, the Proposal offers multiple accommodations to companies, including a phase-in period with a delayed effective date, a new safe harbor from fraud liability, the ability to disclose ranges (with explanation),[22] and an exemption for smaller reporting companies.[23] These accommodations seek to balance the investor need for Scope 3 data with the challenges companies may have in compiling such information.

operations of those with whom it does business. “Transition risks” are the actual or potential negative impacts on a registrant’s consolidated financial statements, business operations, or value chains attributable to regulatory, technological, and market changes to address the mitigation of, or adaptation to, climate-related risks. Proposal, at 21349-50.

[13] Proposal, at 21345.

[14] Proposal, at 21336.

[15] Proposal, at 21350.

[16] Scope 1 emissions are direct GHG emissions from operations that are owned or controlled by a registrant. Scope 2 emissions are indirect emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a registrant. Proposal, at 21344.

[17] Proposal, at 21345.

[18] *Id.*

[19] Scope 3 emissions are indirect GHG emissions not otherwise included in a registrant’s Scope 2 emissions, which occur in the upstream and downstream activities of a registrant’s value chain. Proposal, at 21344.

[20] Proposal, at 21345.

[21] *Id.*

[22] Proposal, at 21388.

[23] Proposal, at 21337.

NYSIF's Support for and Recommendations to Strengthen the Proposal

It is well-established that climate-related physical and transition risks can significantly impact a company's performance and position.[24] Investors, therefore, actively seek information from companies about climate-related risks and the metrics behind those risks.[25] The data is helpful for investors in capital allocation decisions, facilitating credit research, providing insight into a company's governance and risk management practices, and supporting company valuation models.[26] Yet investor demand for such data, which has grown exponentially as the drive to decarbonize has intensified, remains unmet by voluntary company disclosures often selectively made under various overlapping, incomplete, and competing frameworks. As the Commission observes:

> Investors' demand for climate-related information is often met by inconsistent and incomplete disclosures due to the considerable variation in the coverage, specificity, location, and reliability of information related to climate risk. Multiple third-party reporting frameworks and data providers have emerged over the years; however, these resources lack mechanisms to ensure compliance and can contribute to reporting fragmentation. Due to deficiencies in current climate-reporting practices, investor demand for comparable and reliable information does not appear to have been met. As a result, investors may face difficulties locating and assessing climate-related information when making their investment or voting decisions.[27]

NYSIF strongly supports the Proposal because it would require companies to provide detailed and decision-useful data on direct and indirect emissions up and down their value chain. It would also ensure that investors understand companies' risk governance, oversight, and management, their transition plans, as well as milestones and strategies to achieve their climate objectives. The Proposal's requirement that companies disclose climate-related physical and transition risk data in their financial statements will ensure the full range of liability and investor protections otherwise applicable to public filings. This will enhance data reliability and integrity and elicit meaningful information for investors. The Proposal's much-needed transparency will mitigate abusive greenwashing and carbon offsetting practices. It will also reduce investor reliance on third-party data providers, cutting unnecessary costs and helping investors make informed investment and voting decisions appropriate to their risk profiles.

While NYSIF supports the overall thrust of the Proposal, it also recommends that the Commission strengthen certain key aspects. It suggests that the Commission (1) make Scope 3 disclosures more uniform and comprehensive across market participants to prevent under-reporting of valuable data, (2) expand the disclosure requirement to include increasingly important and growing parts of investor portfolios, such as structured products and alternative assets classes

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[24] Proposal, at 21335.

[25] *Id.*

[26] *Id.*

[27] Proposal, at 21425.

to ensure that large segments of the financial markets do not remain opaque to investors, and (3) clarify that company disclosures, transition plans, and strategies must consider the impact of climate-related risks on workers and low-income, minority communities, which are often disproportionately impacted by climate change and whose well-being is inextricably linked to a just transition. Implementing these recommendations will fortify the underlying objective of the Proposal, and we urge the Commission to consider them.

Scope 3 Disclosures: Materiality and Other Considerations

Scope 3 emissions, GHG emissions of third parties in a company's value chain, offer investors a comprehensive understanding of a company's climate-related exposures, particularly transition risks.[28] It includes emissions associated with a company's operations, including suppliers, distributors, and others with whom the company engages to offer its products and services. Monitoring Scope 3 emissions over time can give investors invaluable insight into a company's progress in managing and mitigating transition and other risks. It can also help expose and prevent gamesmanship or "window dressing" by those who may artificially reduce Scope 1 and 2 emissions by outsourcing high emission activities.[29]

However, under the Proposal, Scope 3 disclosure is only required if the *company* deems such emissions to be "material" or if it has adopted GHG reduction targets or goals that include Scope 3 emissions. Leaving the company to determine materiality—that is, whether there is a substantial likelihood a reasonable investor would consider the company's Scope 3 emissions important[30]—creates a significant risk of underreporting. While Scope 3 emissions represent a "relatively large source of emissions for many companies"[31] and therefore "may be material,"[32] the threshold at which a company might feel obliged to disclose is unclear, leading to the risk of incomplete and inconsistent disclosures across companies. Would a company with 35% or 40% Scope 3 emissions relative to overall emissions reveal such data, even considering "the total mix of information available to investors, including qualitative factors,"[33] as required? The answer is not clear.

Tying Scope 3 disclosure to whether a company has GHG reduction targets or goals is also concerning. The requirement could further undermine the Proposal's core objective by disincentivizing companies from setting such plans out of concern that it would trigger additional disclosure obligations. This outcome would be a particular concern for companies whose Scope 3 emissions, although high, may not be more than half of all GHG emissions and, therefore, deemed

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[28] Proposal, at 21377.

[29] Proposal, at 21379.

[30] *See* 17 CFR 240.12b–2 (definition of ‘‘material’’). *See also* Basic Inc. v. Levinson, 485 U.S. 224, 231, 232, and 240 (1988) (holding that information is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision).

[31] Proposal, at 21378.

[32] *Id.*

[33] *Id.*

not material by the company. Companies whose Scope 3 emissions comprise a relatively small portion of overall GHG emissions but could arguably still be "material" would face a similar dilemma. Their individual or collective data may be important for investors to consider in the overall context of their investments.

NYSIF recommends that the Commission remove materiality as a precondition and reconsider tying the disclosure to a company's GHG reduction targets or goals. Instead, NYSIF suggests the Commission require all large participants to disclose their Scope 3 emissions data regardless of materiality or the existence of reduction targets. It also recommends that Scope 3 disclosure be accompanied by an attestation of reasonable assurance, as with Scope 1 and 2 disclosures. While calculating Scope 3 emissions may be challenging, many large participants are already doing so and releasing data under various voluntary frameworks. Over time, as more companies start disclosing their Scope 1 and 2 emissions in a standardized and reliable way, Scope 3 emissions will become progressively easier to calculate and release. As is often said, one company's Scope 3 emissions may be another company's Scope 1 or 2.

The Proposal also offers numerous accommodations to investors on Scope 3, including a long phase-in and a new safe harbor from fraud liability distinct from the existing safe harbor under the Private Securities Litigation Reform Act, which would continue to apply to forward-looking statements. The Proposal also allows companies to provide ranges for Scope 3 estimates with explanation where accurate numbers are not available due to data gaps.[34] These additional accommodations should give companies ample time and opportunity to comply with the rule and the Commission enough assurance to require a comprehensive and uniform approach to disclosing Scope 3 GHG emissions.

Private Markets

The proposed rule's primary focus is on public markets. But investor demand for climate-related risks and metrics goes beyond public debt and equity. A significant and growing component of institutional investor portfolios includes private market assets, including bank loans, securitized products, collateralized loan obligations, and investments in private equity and similar funds. Investors have poured trillions of dollars into these asset classes, which have experienced enormous growth in the last decade and are likely to swell even further as investors navigate the broader challenges of the macro environment and the ensuing volatility in the public markets.[35] Measured by market capitalization or enterprise value, these asset classes may represent approximately half or more of the aggregate value of some institutional portfolios.

Yet these assets fall outside the Proposal's reach, leaving a significant portion of climate-related exposures hidden from view. This opacity undermines the purpose of this Proposal, hindering investors' net zero goals and leaving them in the dark on large swaths of their climate exposures. Many investors will surely try to rely on expensive third-party data providers. But even these providers do not cover most such asset classes or may only provide incomplete, unreliable,

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[34] Proposal, at 21388.

[35] Akila Quinio, Investors rush into private markets in search of returns, Financial Times, Nov. 29, 2021. https://www.ft.com/content/97bb96b5-87c7-4734-a4dc-c72d33e297ac

or inconsistent estimates. There is no policy rationale to exclude such significant and growing asset classes, and we urge the Commission to revise the rule to include them. Doing so will help investors understand the risks in their portfolios, make informed decisions and allow them and regulatory authorities to understand risks in more opaque corners of the financial system.

A Just Transition for Workers and Low Income and Minority Communities

As the economy moves toward decarbonization, investors will need to understand whether companies are ensuring a transition that keeps in mind the workforce as well as lower income and minority communities, which are disproportionately affected by climate-related risks.[36] A dramatic shift in a company's business model without adequate consideration for the well-being of employees and communities will raise serious questions about the viability of a company's transition strategy, impacting investor interest in the company.[37] An unjust transition is also a systemic risk that is highly destabilizing for the economy. NYSIF recommends that the Proposal mandate disclosure of data for investors to understand whether company transition plans include such considerations and whether the company adequately weighs them in meeting its climate-related objectives.

Conclusion

Critics often point to the proposed rule's cost of compliance. But the proposed rule is based on the familiar TCFD framework under which many public companies already disclose climate-related information in their financial statements or sustainability reports. Moreover, the SEC's estimated issuer cost of compliance after the first year is essentially the same as many corporate issuers currently spend on disclosures.[38] Underappreciated and often lost in the debate is how much *investors* struggle, and the costs they incur, to create a clear picture of their portfolio carbon emissions, relying on third-party providers for modeled data that presents an incomplete and inaccurate picture of their holdings. Given increasing investor commitments to achieving net zero emissions and the growing demand for climate-related data, this Proposal will mark a turning point and a significant milestone for investors. We urge the Commission to adopt the rule without delay together with our recommendations to strengthen its provisions.

Sincerely,

Gaurav Vasisht
Executive Director and Chief Executive Officer

[36] A "Just Transition" for workers and communities was included as a goal in the Paris Agreement of 2015.

[37] Interfaith Center on Corporate Responsibility, Global Investors Representing Over US $3.8 trillion Issue Statement of Principles for Job Standards and Community Impacts for a Just Transition, February 9, 2022, available at https://www.iccr.org/global-investors-representing-over-us38t-issue-statement-principles-job-standards-and-community

[38] Supra, note 8.