Cynthia Lo Bessette
Chief Legal Officer
Fidelity Management & Research Company LLC
245 Summer Street V13E, Boston, MA 02210

June 17, 2022

Submitted electronically through: https://www.sec.gov/rules/submitcomments.htm

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

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

Dear Ms. Countryman,

Fidelity Investments ("Fidelity")[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or "Commission") on its proposed amendments that would require registrants to provide certain climate-related information in their registration statements and annual reports (the "Proposal" or "Proposed Rule").[2]

Fidelity is supportive of efforts to make more consistent and comparable SEC registrant disclosures of climate-related factors that are grounded in the well-understood concept of materiality. We agree that policies associated with such disclosures are important to companies' long-term economic success and that *material* climate-related disclosures can enhance the investment research process in order to better capture the totality of a company's risks and opportunities.

Fidelity's robust proprietary research and disciplined investing principles shape all of our investment management capabilities and are the foundation of our sustainable investing approach. Beginning in 2021, Fidelity released its first Report on Investment Sustainability and Impact[3] which provided insight into Fidelity's deep, fundamental investment research process which incorporates environmental, social, and governance ("ESG") analysis as one of several factors to help us better identify risks and provide superior investment opportunities. Fidelity has also been actively engaged in industry conversations to ensure global standardization, while continuing to internally develop our own set of data sources and assessments of the climate-

---

[1] Fidelity is one of the world's largest providers of financial services, including investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 40 million individuals and institutions, as well as through 13,500 financial intermediary firms. Fidelity submits this letter on behalf of Fidelity Management & Research Company LLC, the investment adviser to the Fidelity family of mutual funds.

[2] *See* The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release Nos. 22-11042; 34-94489, RIN 3235-AM87 (March 21, 2022) ("Proposing Release"), *available at* https://www.sec.gov/rules/proposed/2022/33-11042.pdf .

[3] *See* Report on Investment Sustainability and Impact, Fidelity Asset Management ESG Investing Team, available at https://www fidelity.com/bin-public/060_www_fidelity_com/documents/mutual-funds/Stewardship-report.pdf.

related issues that are material to investment performance and can promote sustainable characteristics.

Our extensive experience and investor-focused lens forms our belief that any climate-related disclosures must be grounded in well-defined, established, and understood concepts like materiality. It must also strike the right balance between providing investors with material information about companies' climate-related practices that will be meaningful and not overwhelm them with information that will not provide value, or worse that obscures their focus from more significant disclosures. In this regard, we have concerns that some aspects of the SEC's Proposal may not be designed to elicit the most useful information to investors and may also result in unintended consequences that run counter to the SEC's mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. As we discuss in more detail below, we support the SEC's required disclosures of Scope 1 and Scope 2 emissions data which we agree is information that is financially material and useful to investor decision-making. To the contrary, we have concerns about the SEC requiring prescriptive disclosures of information that is immaterial or evolving, such as Scope 3 emissions data, the excessive board governance disclosures, and reporting financial metrics on transition risks.

Our comments set forth below primarily focus on Fidelity's role as an investor and seek to provide the SEC with our insights as to the information that we deem material to our investment decisions in order to help effectively shape the SEC's evolution of these disclosures for all investors. Fidelity is aware that the SEC recently proposed rulemakings addressing requirements for registered investment companies and advisers related to ESG factors, including related disclosures, and we look forward to separately providing the Commission with our views on those proposals.[4] Since comparable and consistent disclosure is the backbone for any reporting obligations for funds and advisers, we urge the SEC to properly sequence its registrant, fund, and adviser climate-related rules in order to avoid the problems experienced in Europe where climate-related disclosures were imposed on registrants and funds simultaneously, creating significant confusion for investors.

I. EXECUTIVE SUMMARY

Fidelity's comments, detailed below, offer the following recommendations:

- Any disclosure requirements must be grounded in materiality and to that end, the SEC should not require mandatory reporting of Scope 3 Greenhouse Gas ("GHG") emissions ("Scope 3 emissions") at this time as this is an evolving space and current data is speculative. Should the SEC retain the requirement to disclose Scope 3 emissions in the Form 10-K, we strongly suggest it only require this disclosure if material to an industry (and thus material to the financial performance of companies

[4] *See* Investment Company Names, Release No. 33-11067; 34-94981; IC-34593; File No. S7-16-22 (May 25, 2022), *available at* https://www.sec.gov/rules/proposed/2022/33-11067.pdf; *See* Environmental, Social, and Governance Disclosures for Investment Advisers and Investment Companies, Release No. 33-11068; 34-94985; IA-6034; IC-34594; File No. S7-17-22 (May 25, 2022), *available at* https://www.sec.gov/rules/proposed/2022/33-11068.pdf.

within that industry), regardless of whether a company has set GHG emissions reduction targets or goals that include its Scope 3 emissions.

- The SEC should reconsider its board governance disclosure requirements, which are unnecessary due to a board's existing general oversight function which already incorporates addressing and overseeing climate-related risks that are material to a registrant.

- The SEC should reconsider its required disclosures regarding transition risk planning in the audited financial statements and instead require this reporting in *Management's Discussion and Analysis of Financial Condition*, or at a minimum, revise the proposed bright-line 1% threshold for disclosure in favor of a materiality standard.

- The SEC should further refine the scope of the proposal by excluding exchange traded companies that are not otherwise operating companies, including business development companies ("BDCs") and real estate investment trusts ("REITs").
- The SEC should permit reliance by foreign private issuers on global sustainability standards, such as an International Sustainability Standards Board ("ISSB"), which will enhance disclosure by promoting consistency and comparability for investors.

II. FIDELITY'S INVESTING PHILOSOPHY

When investors consider climate change, the wide range of potential risks and data provided across the global economy can be overwhelming to consider and prioritize. Fidelity has been an active participant in efforts to develop standardized disclosure and guidelines on sustainability initiatives. Fidelity has been a supporter of the Task Force on Climate Related Financial Disclosures ("TCFD"), which provides a framework for corporate management and boards to disclose climate-related risks and opportunities on a company's business strategy, governance, risk management, metrics and goals. We are therefore pleased that the SEC has decided to base the Proposal on the TCFD framework and the Greenhouse Gas Protocol, which have been widely adopted and utilized by companies when providing climate-related disclosures in their sustainability or related reports. Fidelity has also been engaged in promoting the definition and adoption of consistent international sustainability standards with the goal of more consistent disclosure from companies over time in order to improve investors' ability to analyze material climate-related factors.

As a leading global asset management firm, Fidelity has a long history of evaluating risk and investment opportunities through company engagement and fundamental analysis—much of it consistent with ESG risk assessment, and climate-related risks impacting registrants are but one element of an overall ESG profile. Fidelity believes that the integration of material ESG factors into our fundamental research enhances our investment decisions and can provide an expanded view into the key drivers of securities, including balance sheet strength, earning growth, and potential business model risks. Material ESG considerations enhance our analysts' investment research mosaic that includes fundamental, quantitative, technical, and other

research, and support a more organic and effective integration of ESG research within our portfolios.

Fidelity's ESG ratings system was launched in 2020 with the goal of providing insight into financially material information about companies not already captured by traditional financial statement analysis. It builds on and formalizes our proprietary ESG materiality frameworks and represents an integrated process for evaluating a company's current and future ESG positioning and qualities relative to its peers. The ratings enhance the ability of our investment teams to identify how material ESG factors are influencing a company's earnings outlook, business model, and strategic vision. Fidelity's ESG ratings system leverages the expertise of our dedicated ESG research team and fundamental analysts across all asset classes who evaluate the materiality of ESG factors using traditional and proprietary methods, including company engagement as well as data and estimates gathered from multiple sources. While the specific methodology behind our ratings is proprietary, at its core is the concept of "financial materiality" which we incorporate using a combination of proprietary, customized and third-party data, including a number of industry providers, such as the materiality map published by the Sustainable Accounting Standards Board (SASB).[5]

Additionally, at the enterprise level, Fidelity released its first Environmental Report[6] in 2021 demonstrating our corporate commitment to environmental sustainability, including climate resilience. Fidelity has developed, and is implementing a climate resilience strategy pertaining to all core business functions, personnel, and physical assets. This plan enables us to assess and address climate-related risks and opportunities so that we are poised to productively contribute to the global transition to a lower carbon economy as expected from many regulators in the U.S. At the corporate level, we recognize the leadership role that the financial services sector can play, along with many others, in creating transparency on science-based data and targets and increasing access to consistent and reliable climate information for improved decision-making.

III. RECOMMENDATIONS TO THE PROPOSAL

A. *Materiality Must be the Core of Any Disclosure Requirements*

As we describe above, Fidelity's fundamental research process focuses on "material" climate-related factors that impact a company's earnings potential and valuation in a positive or negative way. Materiality matters because it calls for companies to manage (and investors to measure) climate-related factors that are relevant and are most likely to impact performance and shareholder value, including mitigating and possibly reducing risk for investors. Focusing on materiality is critical. It allows us to concentrate on relevant company information that is decision-useful instead of data that is immaterial and of little to no value to investors. Fidelity's ESG ratings are based on materiality maps that help provide a comprehensive view of a company's positioning on material ESG issues, and assist investment professionals in assessing

[5] SASB has identified industry specific, "financially material issues" reasonably likely to impact the financial condition or operating performance of a company.
[6] *See* 2021 Environmental Report for Fidelity Investments available at https://www fidelity.com/bin-public/060 www fidelity com/documents/about-fidelity/Fidelity-Investments 2021-Environmental-Report.pdf.

opportunities and risks grounded on material themes. Our ESG ratings complement our fundamental research through an assessment of the financially material ESG factors measuring idiosyncratic risks and externalities that are most likely to impact financial performance, shareholder value and possibly risk for investors.

We strongly urge the SEC to take a similar approach by requiring that its proposed climate-related disclosures be grounded in materiality. As discussed below, we believe there are several aspects of the Proposal that exceed, or redefine the well-recognized definition of, materiality and should be reconsidered by the SEC, in particular the requirements to disclose Scope 3 emissions, the disclosure of a number of board governance items, and reporting of financial metrics for transition risks in a registrant's audited financial statements.

1. Disclosure of Scope 1 and 2 and 3 Emissions

Fidelity supports requiring companies to disclose in the Form 10-K (on both an aggregated and disaggregated basis) Scope 1 and 2 emissions, and requiring disclosure of the data in gross and net terms to enable investors to understand how a company uses carbon offsets and renewable energy credits (RECs) and the role those play in that company's climate-related business strategy. We believe that Scope 1 and 2 emissions data are now table stakes and part of investors' fundamental expectations of companies.

The Proposal would also require disclosure of total Scope 3 emissions for the registrant's fiscal year if those emissions are material, or if the registrant has set a GHG emissions reduction target or goal that includes its Scope 3 emissions. While a materiality threshold has not been proposed, the Release notes that some companies rely on, or support reliance on, a quantitative threshold such as 40 percent when assessing the materiality of Scope 3 emissions.[7] The Release, though, directs that the determination for disclosure must take into account the total mix of information available to investors, including an assessment of qualitative factors.[8]

We do not believe that Scope 3 emissions – by definition - meet the materiality threshold for disclosure since this information is speculative, nascent, unreliable, and there are no current standards to ensure consistent and comparable data, resulting in the potential for investor confusion. The Release acknowledges that Scope 3 emissions is a relatively new type of metric but posits that this information is material to investors because "capital markets have begun to assign financial value to this type of metric."[9] We disagree that merely because investors arguably have begun to "assign value" to certain information it is *de facto* material. Indeed, this reference highlights the developing and evolving nature of Scope 3 emissions data which, while potentially ripe for disclosure in the future, certainly right now does not meet the articulated standard for materiality consistent with Supreme Court precedent.[10]

[7] Release at 165.
[8] Release at 166.
[9] Release at 173.
[10] *See* Release at 64, note 209 (*citing* 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

Fidelity's proprietary ESG rating primarily assesses most companies based on Scope 1 and 2 emissions, with the intention of understanding a company's ability to manage the aspects of their emissions that they have more direct control of – specifically, the energy purchased to power operations, and the emissions that result from their owned and operated assets. While Fidelity has begun seeing Scope 3 emissions data being voluntarily provided by certain registrants and looks at those disclosures to get additional color on a company's efforts, we do not formally incorporate this data into our ratings due to its evolving and premature nature.

Currently, there are no common standards that companies can use to calculate Scope 3 emissions, and the majority of currently reported data are estimates based on assumptions because companies need to rely on proxies (rather than actual numbers) to calculate certain components of Scope 3 emissions. Since the information disclosed is speculative in nature and not sufficiently defined or developed at this time, we do not believe it meets the threshold of materiality. Moreover, we believe that mandating disclosure of Scope 3 emissions at this time could be overwhelming and create investor confusion by potentially obscuring actual material information, which retail investors should be focused on instead. Information in the Form 10-K that is not decision-useful or meaningful to investors can also perpetuate non-comparable and inconsistent disclosures among companies.

Accordingly, we strongly recommend that the SEC reconsider requiring the reporting of Scope 3 emissions data at this time and instead allow time for this area to mature.[11] However, the SEC should not chill the voluntary disclosure and continued development of this information. While in our view, not all climate-related matters are materially relevant to the long-term investment performance of a company and these factors can vary based on business model, industry, or region, we believe it is important to continue to encourage companies to voluntarily disclose Scope 3 emissions data where possible –albeit outside the Form 10-K and its well-established materiality standard.

Alternatively, should the SEC retain the requirement to disclose Scope 3 emissions in the Form 10-K, we strongly suggest it only require this disclosure if material to an industry (and thus material to the financial performance of companies within that industry), regardless of whether a company has set GHG emissions reduction targets or goals that include its Scope 3 emissions.

2. Board Related Disclosures

The Proposal would require registrants to disclose a host of board governance items including, (i) identifying any board members or board committees responsible for the oversight of climate-related risk; (ii) disclosing whether any member of a registrant's board of directors has expertise in climate-related risks, with disclosure required in sufficient detail to fully

important in deciding how to vote or make an investment decision; and quoting TSC Industries, Inc. v. Northway, Inc., 426 U. S. 438, 449 (1977) to further explain that an omitted fact is material if there is "a substantial likelihood 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.")).

[11] We agree with the SEC's approach to exempt smaller reporting companies from the Scope 3 emission disclosure provisions.

describe the nature of the expertise; (iii) providing a description of the processes and frequency by which the board or board committee discusses climate-related risks; (iv) disclosing whether and how the board or board committee considers climate-related risks as part of its business strategy, risk management, and financial oversight; and (v) disclosing whether and how the board sets climate-related targets or goals and how it oversees progress against those targets or goals, including the establishment of any interim targets or goals.

Fidelity is a supporter of board governance and transparency, however we believe that the Proposal's requirements are overly prescriptive and would insert new obligations on boards that are inconsistent with their general oversight obligations. We would expect that a board's duties already encompass reasonable inquiries about climate-related risks that are relevant and material to a registrant's business. Indeed, a board's oversight responsibility would include review of many other aspects of a registrant's business and not be limited *specifically to climate-related risks*. In other words, there is no justification for singling out climate-related risks for requiring such a heightened level of board disclosure concerning their member's qualifications and oversight responsibilities.

We also have concerns that this requirement will dilute board effectiveness as companies will likely feel pressure to "check a box" by finding board members with climate-related expertise, rather than focusing on the overall qualifications of board candidates holistically. We are aware that the SEC has recently proposed in its Cybersecurity Proposal for Public Companies that boards include a "cybersecurity expert" which, taken together with this Proposal, could lead to boards composed of single subject matter experts resulting in deferral to those individuals on their particular topics rather than broad, beneficial board engagement on these topics generally.[12]

Similarly, requiring registrants to disclose the frequency of board discussions of climate-related risks puts undue emphasis on form over substance. Such a requirement will put pressure on boards to hold frequent discussions on climate risk but does nothing to ensure that those discussions are fruitful or productive. Boards today are tasked with overseeing the management of a company's operations and risks, which they do by exercising appropriate judgment over how a board's time, focus and resources are spent and in keeping with a board's fiduciary duties. Forcing narrow subject matter expertise on boards, and encouraging rote discussions, will significantly impair a board's ability to discharge their oversight duties in a way that best serves a registrant's shareholders.

3. Financial Statement Metrics

The proposal would revise Regulation S-X to require registrants to include a new footnote in their financial statements disclosing the financial statement impacts of (1) climate-related events including severe weather events and other climate-related impacts such as flooding, drought, wildfire, and sea level rise, and (2) transition activities including efforts to reduce GHG emissions or otherwise address transition risks. For both climate-related events and transition activities, the footnote disclosures would include financial impact metrics, expenditure

---

[12] *See* Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, Release Nos. 33-11038; 34-94382; RIN 3235-AM89 (Mar. 9, 2022), *available at* https://www.sec.gov/rules/proposed/2022/33-11038.pdf.

metrics, and a discussion of the impact on financial estimates and assumptions. Financial disclosure would not be required if the absolute value of impact on a financial line item is less than 1%.

While Fidelity is generally supportive of disclosure of transition risk planning, which can be helpful to understanding the long-term direction of a company, we do not believe that the methodologies, framework, and accounting for this information has matured to the point to require inclusion in a registrant's audited financial statements. While there are several different methodologies available for accounting for emissions, there is no standardized taxonomy, which means that companies are under no obligation to report in a standardized method. Currently, companies may be following guidance set by trade associations, or perhaps most commonly, the guidance set by the GHG Protocol. In many instances, the few companies that are voluntarily disclosing transition risk metrics in their sustainability reports are basing them on estimates, assumptions, and other qualifications. Due to the unreliability and evolving nature of this information, Fidelity currently does not factor this information into our proprietary systematic ratings.

Instead, and to further encourage companies to consider reporting and developing transition risk planning, we suggest that the SEC formalize requiring narrative disclosure pertaining to transition risk planning in *Management's Discussion and Analysis of Financial Conditions of Operations* ("MD&A") instead of requiring the proposed prescriptive reporting in the financial statements. This approach meets the SEC's goal of encouraging disclosure of transition risks and will be more meaningful to investors as the disclosures in the MD&A will be presented in context with additional quantitative and qualitative information describing the impact on the company's financial results.

However, should the SEC retain the financial statement note disclosure requirement for transition risks, we strongly suggest it reconsider the proposed bright-line 1% threshold in favor of a materiality standard that is aligned with how materiality is determined for all other financial statement disclosures made by companies. As discussed above, all disclosures must be rooted in materiality. Similar to our views expressed above regarding the Scope 3 emissions disclosures, merely because *some* investors may find *some* value in information, does not make information *de facto* material. Requiring disclosure of immaterial information will disserve retail investors by obscuring the information they should be focused on. It also will disserve companies by requiring them to expend significant resources to provide, and have audited, this new financial metric or choose to reconsider transition risk planning to potentially avoid having to undertake this burdensome and costly reporting.[13]

B. *The SEC Should Exclude BDCs and Other Non-Operating Companies from the Scope of the Rule*

[13] Should the SEC choose to adopt any bright-line test for disclosure of financial statement metrics, we urge it to add a note in the Adopting Release clarifying that this standard is only applicable to the specific disclosures required by this rule and that the Commission is not otherwise revising the well-recognized and existing practices concerning materiality in other required SEC disclosures.

The Proposed Rule would apply to registrants with reporting obligations pursuant to Exchange Act Section 13(a) or Section (d) and companies filing a Securities Act or Exchange Act registration statement. While registered investment companies are excluded from the scope of the Proposal, other exchange traded companies that are not otherwise operating companies, including for example business development companies (BDCs) and publicly-traded real estate investment trusts (REITs), are not. The Release requests comment as to whether these types of registrants should be excluded from all or some of the proposed climate-related disclosure rules and in our view the answer is yes.

We would urge the SEC to exclude exchange traded companies that are not otherwise operating companies from any final rule because, like registered funds, we do not believe the proposed disclosures are helpful to investors in these investment vehicles. Further, requiring this disclosure regime would discourage asset managers from choosing these types of structures, to the detriment of their shareholders and investors.

For example, BDCs are specialty finance companies that invest primarily in private, small to mid-size companies. BDCs are a type of closed-end investment company, governed by the provisions of the Investment Company Act and its related rules. But, because BDCs are not actually "registered" under the Investment Company Act, and rather "elect" to be regulated as BDCs under many of its provisions, they do not fall under the exemption in the Proposed Rule for registered investment companies. Congress created BDCs in 1980, as part of the Small Business Investment Incentive Act (the "BDC Act") to provide small and emerging companies with capital and financing that may otherwise be unavailable to them. Investors in BDCs can in turn gain exposure to private companies that are not typically available to the broader retail market. Like other investment vehicles, including registered investment companies, BDCs typically do not have employees, infrastructure, or physical operations, and most of the operations and functions of the BDC are outsourced to third-parties such as investment advisers, administrators, custodians and other service providers, making the calculation of Scope 1 and 2 GHG emissions unfeasible and the narrative disclosure unnecessary.

More concerning, requiring BDCs to disclose this information could have a chilling effect on the growing use of BDCs as lending alternatives to traditional banks that have been unwilling or unable to finance small private businesses. The BDC market has grown to over $186 billion as of December 31, 2021.[14] Imposing a significant, but inapplicable, disclosure regime will discourage sponsors from choosing a BDC structure while offering no discernable benefit to BDC investors. While traditional private equity funds have existed since long before the BDC Act, they largely exclude the retail investing market and typically focus on more mature private companies. Imposing climate-related risk disclosures on BDCs, and discouraging their use, would likely have a significant impact on small and mid-size companies that have benefited from the increased flow of capital that the BDC Act was intended to provide. The same logic

[14] Source: Cliffwater 2021 Q4 Report on U.S. Direct Lending.

equally applies to other types of exchange traded companies that are not otherwise operating companies, including REITs and other types of exchange traded products.

C. *Alternative Reporting Provision for Foreign Private Issuers Should be Allowed*

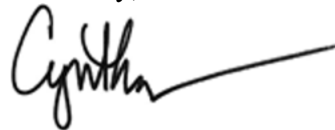
The Release requests comment on whether the SEC should adopt an "alternative reporting provision" that would permit a registrant that is a foreign private issuer and subject to the climate-related disclosure requirements of an alternative reporting regime that has been deemed by the Commission to be substantially similar to the requirements of proposed Subpart 1500 of Regulation S-K and Article 14 of Regulation S-X to satisfy its disclosure obligations under those provisions by complying with such alternative reporting regime.[15] In furtherance, the Release specifically identifies the recent creation of an International Sustainability Standards Board ("ISSB")[16] and seeks comment on whether, under an alternative reporting provision, that provision should be structured to encompass reports made pursuant to criteria developed by a global sustainability standards body, such as the ISSB.

We recognize that the SEC is not alone in the consideration of standardizing climate-related disclosure for their registrants, and we applaud the SEC for recognizing the current efforts of global sustainability standards and strongly support the reliance on global standards, such as the ISSB, for reporting by foreign private issuers. This will achieve the SEC's goal of providing investors with useful information while mitigating the potential burden on issuers to disclose on regionally nuanced standards. We believe permitting reliance on global sustainability standards will enhance disclosure by promoting consistency and comparability for investors.

* * *

Fidelity would be pleased to provide further information, participate in any direct outreach efforts the Commission undertakes, or respond to questions the Commission may have about our comments.

Sincerely,



cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner

William Birdthistle, Director, Division of Investment Management

---

[15] Release at 280.
[16] Release at 283.