June 17, 2022

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

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

Dear Ms. Countryman:

This letter is submitted on behalf of the Loan Syndications and Trading Association ("the LSTA," or "the Association") in response to the Securities and Exchange Commission's ("SEC," or "the Commission") proposed rule, The Enhancement and Standardization of Climate-Related Disclosures for Investors, (hereinafter the "Proposed Rule").[1]

The LSTA is a not-for-profit trade association that is made up of a broad and diverse membership involved in the origination, syndication, and trade of commercial loans. The 580+ members of the LSTA include commercial banks, investment banks, broker-dealers, hedge funds, mutual funds, insurance companies, fund managers, and other institutional lenders, as well as law firms, service providers and vendors.[2]

I. Executive Summary

We recognize the extraordinary challenges faced by the Commission in crafting climate disclosure rule proposals given the complicated issues presented, and we appreciate the opportunity to comment on the Proposed Rule. The Proposed Rule will have long-term implications for all market participants, and the LSTA commends the SEC's efforts to assure that investors receive consistent, comparable, and decision-useful information on this topic. Moreover, the LSTA fully supports the Commission's alignment of the Proposed Rule's reporting requirements with the recommendations of the Task Force on Climate-related Financial Disclosures ("TCFD") and its reference to the Greenhouse Gas Protocol. Alignment with these internationally recognized frameworks will allow for greater global consistency with rules in other jurisdictions that use these frameworks and, importantly, may help reduce the burden on reporting companies that operate globally. Furthermore, the TCFD offers well-developed guidance which companies can take advantage of in preparing their disclosures. However, while

[1] The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release Nos. 33-11042; 34-94478 (Mar. 21, 2022), https://www.sec.gov/rules/proposed/2022/33-11042.pdf (hereinafter "Proposed Rule").
[2] The LSTA undertakes a wide variety of activities to foster the development of policies and market practices designed to promote just and equitable marketplace principles and to encourage cooperation and coordination with firms facilitating transactions in loans. Since 1995, the LSTA has developed standardized practices, procedures, and documentation to enhance market efficiency, transparency, and certainty. For more information, visit www.lsta.org.

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LSTA supports the SEC's overall goals, we are concerned that key aspects of the Proposed Rule are unworkable as drafted and warrant reconsideration.

The Proposed Rule presents an immense challenge for registrants—as well as private companies in registrants' value chain that will need to provide Scope 3 emissions data to registrants—given the significant number of complicated issues addressed in the Proposed Rule, including developing scientific issues, and structural issues in climate reporting with respect to data collection, calculation, and standardization. Our overarching concern is that the Proposed Rule, as drafted, fails to meet the SEC's goal of providing reliable, decision-useful information to investors. The LSTA's principal concern is that the Proposed Rule departs from the Commission's established standard of materiality for reporting, which will result in the requirement to disclose variable and immaterial information and will fail to assure that registrants disclose decision-useful climate information to investors. We identify three specific concerns: First, disclosure of climate data, specifically Scope 3 greenhouse gas ("GHG") emissions information, in a registrant's annual report on Form 10-K as proposed, will necessarily rely on indirect estimation, assumptions, and external data collection, potentially resulting in significant differences reported by registrants in subsequent filings. Such disclosures are not likely to provide consistent, comparable, nor decision-useful information. Second, the safe harbor for Scope 3 emissions disclosures is inadequate under the circumstances. Third, the proposed Regulation S-X footnote disclosures, which would mandate a bright-line 1% threshold for disclosure, would not only be difficult to operationalize, but would also fail to provide decision-useful information to investors due to the low disclosure threshold, which departs significantly from traditional materiality standards.

II. The Proposed Rule

The LSTA's overarching concern is that the Proposed Rule's departure from established materiality standards will result in disclosure of variable and immaterial information, failing to meet the SEC's goal of providing decision-useful information to investors. The LSTA urges the SEC to continue to adhere to the traditional materiality standard which has guided companies and the SEC in identifying decision-useful information for investors since the 1930s. We detail our additional specific concerns as follows.

A. Scope 3 GHG emissions are not appropriate for mandatory disclosure at this time.

The Proposed Rule would require registrants to disclose Scope 3 GHG emissions if material or if the registrant has set a GHG emissions reduction target or goal that includes its Scope 3 emissions.[3] The SEC should not mandate disclosure of Scope 3 emissions at this time.

The LSTA appreciates the Commission's efforts to enhance GHG emissions disclosures as a metric to assess a registrant's exposure to climate risks, to provide comparable information to investors. Based on the LSTA's extensive work with our members on voluntary climate-related disclosures, Scope 3 emissions are not appropriate as mandatory disclosure items due to the lack

[3] Proposed Rule, at 470.

of underlying data and because Scope 3 emissions collection, calculation and analysis methods are still in very early stages.

Disclosure of Scope 3 emissions data in a registrant's Form 10-K will necessitate significant estimation for one or more quarters of the fiscal year because the Scope 3 emissions data will not be available in most cases, and in any case, not in time to meet Form 10-K filing deadlines. In addition, because Scope 3 emissions are those GHG emissions not associated with, either directly or indirectly, operations owned or controlled by a registrant, such disclosure is likely to rely heavily on external data entirely outside the control of the registrant. The Proposed Rule acknowledges that registrants may calculate Scope 3 emissions based on data derived or estimated from other sources such as "third-party sources outside of a registrant's value chain" including "industry averages of emissions, activities, or economic data."[4] It is inappropriate for the SEC to require registrants to disclose such third-party data, especially data outside of its value chain and based on assumptions, in a mandatory public company disclosure subject to filing liability. Further, estimation and reliance on third parties would result in disclosure of immaterial information that is neither comparable nor accurate, as sought by the SEC. In sum, it is impracticable to require registrants to collect, assess, and calculate Scope 3 emissions where this emissions data reflects external, unverifiable third-party information and/or is produced based on estimation and assumptions.

Further, disclosure of Scope 3 emissions where a registrant has merely set a GHG emissions reduction target or goal that includes Scope 3 emissions, yet where the Scope 3 emissions are not material, conflicts with the SEC's traditional standard of materiality, as outlined above. The Proposed Rule would also require disclosure of any categories of Scope 3 emissions that are "significant to the registrant,"[5] without defining "significant." This is a further departure from materiality, which will introduce inconsistencies in reporting. This also will add an additional complication for the many registrants that do not currently calculate Scope 3 emissions by category.

In addition to the unworkability of reporting Scope 3 emissions for public companies, the Proposed Rule raises concerns that it would indirectly subject private non-reporting companies to SEC disclosure requirements. This would be unduly burdensome for both private companies—many of which do not have any GHG emissions data—and public companies, which likely will not be able to obtain GHG emissions data from private companies in their value chain. Many private companies are not sophisticated in ESG and climate matters and may not have sufficient resources in place to collect, calculate, and share GHG emissions data with other entities in their value chain. Establishing GHG emissions data collection systems would be unduly burdensome on unregulated private entities, making it virtually impossible for registrants to obtain emissions data from all entities in their value chain— and thus resulting in significant estimation. Even more problematic: there is a lack of standardized methodology for calculating Scope 3 emissions, which—even for companies that have the resources to collect the data—will lead to significant inconsistencies in reported GHG emissions to registrants in their value chain, leading to variability if required in public disclosures. Lack of data from private companies and

[4] *Id.*
[5] *Id.*

inconsistencies in disclosures will fail to provide comparable, decision-useful information to investors.

Due to these significant concerns, the SEC should not require disclosure of Scope 3 emissions at this time. If, nevertheless, the Commission includes the Scope 3 emissions disclosure requirement in the final rule, we believe that the final rule should only require Scope 3 emissions disclosure by companies who have set publicly disclosed GHG reduction goals or targets that include Scope 3 emissions, and disclosure should be limited to Scope 3 emissions relevant to such goals or targets.

B. The proposed Safe Harbor is inadequate for Scope 3 emissions disclosures.

The Proposed Rule would provide a limited safe harbor for Scope 3 emissions disclosures. A registrant would not be subject to liability for misstatements or omissions in its Scope 3 emissions disclosures unless "it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith."[6] As discussed above, the LSTA strongly believes that Scope 3 emissions disclosures should not be required at this time and, further, that if Scope 3 emissions disclosures are mandated, the proposed safe harbor is inadequate as drafted given the lack of consensus in how to measure Scope 3 emissions. At a minimum, the SEC should implement a broader safe harbor for Scope 3 emissions, similar to that provided for forward looking statements under the Private Securities Litigation Reform Act (PSLRA)[7], if it requires such disclosures.

As explained above, Scope 3 emissions disclosures will necessarily be estimates, based heavily on assumptions and external third-party information. For many companies, the concept of assessing Scope 3 emissions is in its early stages, and the learning curve is steep as the methodologies for collecting and calculating Scope 3 emissions evolve. Accordingly, the SEC should provide a meaningful safe harbor appropriate to the nature of Scope 3 emissions data: this data is reliant on assumptions and external third-party data, outside the control of the registrant.

C. The Regulation S-X financial statement footnote disclosures should not be required.

The Proposed Rule would require registrants to include footnote disclosures in their consolidated financial statements on a line-item basis if financial impacts or expenditure of severe weather events and other natural conditions, or impacts and expenditures related to transition activities, meet or exceed 1% for the relevant fiscal year for each line item. This is unworkable and problematic in several respects, and the SEC should not include this requirement in any form in a final rule.

First, the 1% disclosure threshold would not provide decision-useful information to investors because it is an exceedingly low, arbitrary threshold that is not tied to materiality. Requiring disclosure of additional information based on an arbitrary threshold would not add decision-useful information and could reduce the value of a registrant's overall disclosures due to an

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[6] *Id.* at 474.

[7] Private Securities Litigation Reform Act of 1995, Public Law 104–67 (Dec. 22, 1995).

First, the 1% disclosure threshold would not provide decision-useful information to investors because it is an exceedingly low, arbitrary threshold that is not tied to materiality. Requiring disclosure of additional information based on an arbitrary threshold would not add decision-useful information and could reduce the value of a registrant's overall disclosures due to an inundation of immaterial information. Further, the footnote disclosure requirement is unworkable at any threshold because many registrants do not track climate-related impacts by financial statement line item, and it would be nearly impossible to report by line item where existing systems are not configured to track climate-related revenues and costs in this manner.

For these reasons, the SEC should not require financial statement footnote disclosures for climate-related information.

III. Closing

The LSTA appreciates the opportunity to provide input on the Proposed Rule and is committed to remaining engaged in the development of climate-related disclosure requirements, an important issue to all financial market participants. The LSTA appreciates the Commission's efforts to enhance the accuracy, reliability, and comparability of climate-related disclosures for investors. The LSTA supports adoption of a final rule that provides decision-useful information to investors, but we believe that the current Proposed Rule requires significant refinement to achieve that goal.

We would be happy to discuss these comments and answer any questions. Please contact Tess Virmani at

Sincerely,

Tess Virmani
Associate General Counsel, and
Executive Vice President – Public Policy, Head of ESG
LSTA