



VIA EMAIL: rule-comments@sec.gov

June 17, 2022

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

Re: Comments by HP Inc. on the SEC's Proposal on the Enhancement and Standardization of Climate-Related Disclosures for Investors (File No. S7-10-22)

Dear Ms. Countryman,

HP Inc. ("HP") appreciates this opportunity to provide comments to the U.S. Securities and Exchange Commission (the "SEC" or the "Commission") in response to the Commission's [March 21, 2022 proposal for public comment](#) on the topic of the enhancement and standardization of climate-related disclosures for investors (File No. S7-10-22) (the "Proposal").

As we noted in our [June 14, 2021 correspondence to the Commission](#), HP supports transparency in the appropriate disclosure of the governance, oversight, and management of climate-related risks and metrics and believes that providing information that is material to a reasonable investor is an essential element in addressing the challenges posed by climate change and maintaining investor confidence that companies are addressing such material items responsibly.

HP has published public sustainability reports for 21 years, and we were the first global technology company to publish our full carbon footprint and set carbon emissions reduction goals for our full value chain, including validation by the Science-Based Targets initiative. For three consecutive years, HP has been the only technology company globally to receive a triple "A" rating across CDP's Climate, Water, and Forests lists and Supplier Engagement Leaderboard. Starting in 2020, we aligned our reporting with the recommendations of the Taskforce on Climate-Related Financial Disclosures in addition to aligning with the reporting frameworks promulgated by the Sustainability Accounting Standards Board, Global Reporting Initiative, and the World Economic Forum International Business Council.¹ Today, our Scopes 1, 2, and 3 emissions are reported in accordance with the Greenhouse Gas Protocol, including limited assurance by a third-party auditor. HP voluntarily discloses its greenhouse gas ("GHG") emissions footprint, GHG reductions targets, progress towards achieving those targets, and information about our sustainability governance and material climate-related risks in our annual Sustainable Impact Report, publicly available CDP questionnaire, and our filings with the Commission. We are committed to meaningful reductions in GHG emissions from both our direct operations and value chain,² and have taken actions to safeguard our business and operations from the threats presented by climate change. We have also taken an ambitious stance on climate-related issues, pledging to

¹ See, HP Inc., HP Sustainable Impact Report 2021, <https://www8.hp.com/h20195/v2/GetPDF.aspx/c08228880.pdf>.

² HP has announced a goal to reduce Scopes 1, 2, and 3 GHG emissions by 50% below 2019 levels by 2030 and reach net zero GHG emissions by 2040. More information about HP's climate targets is available at <https://press.hp.com/us/en/press-releases/2021/hp-inc-announces-ambitious-climate-action-goals.html>.

achieve net zero GHG emissions across our value chain (Scopes 1, 2, and 3) by 2040, reaching 75% circularity for products and packaging by 2030, and maintaining zero deforestation for HP paper and paper-based packing, all while working to counteract deforestation for non-HP paper used in our products and printer services.³

HP strongly supports the Commission's goal to provide investors with consistent, comparable, and reliable climate-related disclosures. We support the disclosures of Scopes 1, 2, and 3 emissions, climate-related risks and governance, and the methodology and assumptions pertaining to climate targets and goals, and we fully believe in the value of providing investors with comparable and standardized climate disclosures. We recommend the Commission consider the following comments when adopting the final rules (the "Final Rules").

1. Disclosure of Financial Impact and Expenditure Metrics Should Be Based in Accepted Standards of Materiality, Rather Than a 1% Threshold

We support the Commission's efforts to inform investors of the financial impacts of climate-related events and activities. However, we believe that the proposed amendments to Regulation S-X requiring disclosure of such impacts if their effect on the relevant financial statement line item is equal to or greater than 1% of the total will solicit information that is largely inconsequential for investors and substantially increase registrant costs, costs that will ultimately be borne by investors and the public markets more broadly.⁴ Subject to limited exceptions, "materiality to investors" has been the guiding principle of SEC disclosures.⁵ Setting the threshold at 1% would be a substantial deviation from a normative materiality assessment and the SEC Staff's own guidance in Staff Accounting Bulletin: No. 99.⁶

Since the proposed threshold would apply no matter how small the financial statement line item, companies will be required to report on impacts to 1% of line items that are ultimately insignificant to the rest of the company's financials.⁷ In addition, as the 1% threshold applies on both a gross and an aggregate basis, the Proposal would likely lead to voluminous climate-related disclosures that would confuse investors and not be material to a reasonable investor.⁸ For example, if a registrant's facility were damaged during a severe weather event, insurance proceeds may mitigate the registrant's financial losses, but nonetheless, the disclosure would be triggered by the gross amount.⁹ We are concerned that such disclosures could mislead investors into thinking that climate-related impacts have a greater effect on the registrant's operations than is the case. Furthermore, registrants would be incentivized to conservatively (over)disclose such financial impacts, as it is much more difficult to discern in practice what is, or is not, related to a transition activity or climate change. For example, it will be difficult to determine whether a change in operating costs resulting from a supplier's increased prices was traceable to climate-related transition activities, or even whether a particular severe weather event was due to (or at least in part made more probable by) climate change. In addition, many registrants, such as HP, do not measure capital expenditures by climate purpose, requiring the implementation of costly controls and procedures organization wide.

³ HP Inc., Annual Report for the Fiscal Year Ended October 31, 2021, at 8 (2021).

⁴ See proposed 17 CFR § 210.14-02(b).

⁵ The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21334, 21366 (Apr. 11, 2022).

⁶ See Staff Accounting Bulletin No. 99, 64 Fed. Reg. 45149, 45151-52 (Aug. 19, 1999).

⁷ See proposed 17 CFR § 210.14-02(b).

⁸ See *id.*

⁹ See *id.*

Such determinations will also require an assessment of inherently uncertain factors and require broad assumptions and estimates. As a consequence, we anticipate that registrants would seek to minimize their risks of liability through disclosure, filling the notes to the financial statements with trivial information that is of little use to investors, thus dramatically increasing the volume of disclosure and registrant compliance costs without commensurate benefit to investors. Registrants will need to track the absolute value of all impacts on a per-line item basis and establish new controls and procedures to properly address the requirement. Even after taking these steps, the resulting disclosures are likely to be highly dependent on estimates, as disaggregating climate-related impacts and expenditures from other factors is inherently speculative and subjective. This will further decrease the utility of these disclosures.

We urge the Commission to replace the 1% threshold with a materiality standard that is consistent with established SEC rules and precedent and Generally Accepted Accounting Principles. Such an approach would allow registrants and investors to focus on assessing and managing the material impacts and expenditures related to climate change. We believe that qualifying the proposed financial impact and expenditures disclosures with an accepted materiality standard would be a proper middle ground between ensuring investors are apprised of the material climate-related impacts and expenditures facing registrants without overemphasizing non-material climate-related matters and requiring registrants to undertake costly changes to their operations in order to comply.

2. The Commission Should Not Require Disclosure for Historical Periods in Year One of Compliance

The proposed amendments to Regulation S-X would require disclosure “for the registrant’s most recently completed fiscal year and for the historical fiscal year(s) included in the consolidated financial statements.”¹⁰ Under the Proposal, registrants would be required to disclose historical fiscal year(s) included in their respective consolidated financial statements in the filing beginning in year one of compliance. This requirement will significantly increase the cost of compliance for registrants as it would force registrants to revise methodologies and recalculate emissions for previous years so that disclosures are compliant with the Proposal. We encourage the Commission to avoid retroactively requiring historical disclosures beyond the start date of the Proposal.

3. The Commission Should Move the Proposed Required GHG Emission Disclosures to a Standalone Climate Report Due After a Registrant’s Annual Report

We recommend that the Commission revise the Proposal to require GHG emission disclosures in a standalone climate report, separate from a registrant’s annual report, due no sooner than 180 days after a registrant’s fiscal year-end.¹¹ Several commenters have already indicated that a registrant may find it difficult to complete its GHG emissions calculations for its most recently completed fiscal year in time to meet its disclosure obligations for that year’s annual report.¹² Rather than requiring registrants to provide estimates for their fourth quarter emissions, we recommend that the Commission consider a standalone climate report with a submission deadline after that of the annual report, as this would recognize that GHG emissions data is collected on a different timeline than financial data. For example, the EPA reporting requirements require that

¹⁰ See proposed CFR 17 § 210.14-01(d).

¹¹ See The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21334, 21408 (Apr. 11, 2022).

¹² *Id.* at 21387.

companies provide their Greenhouse Gas Reporting Program (“GHGRP”) reports for the previous calendar year by March 31 of the following year. The EPA then completes its verification process before typically publishing the data in October.¹³ By adopting a standalone report with a reporting deadline after that of the annual report, the Commission would provide registrants with more flexibility in preparing their emissions disclosures and not run afoul of investor expectations as investors are already accustomed to reviewing such data in a later timeframe.

Allowing companies to provide a standalone climate report would also mitigate concerns around confusing investors. Under the Proposal, registrants would need to come up with a company-unique approach to estimating GHG emissions during the fourth quarter to comply with the financial reporting timeline. Allowing companies to come up with their own approach will not lead to enhanced standardization and comparability. Further, allowing registrants to estimate their fourth quarter emissions and (presumably) correcting such estimates in a later filing would only serve to confuse investors, undermining the policy goals of the Proposal. By contrast, a standalone climate report would be more beneficial to investors, as it would be easier to access and compare emission disclosures between registrants as the information would be provided in a separate standalone filing. Giving registrants the flexibility to report their emissions 180 days after the most recent fiscal year end would also provide registrants with much needed flexibility and additional time to verify their emissions disclosures, avoiding the concerns related to the timeline for preparing these disclosures and the need to revise previous estimates. Therefore, we recommend that for purposes of the Final Rules, the Commission adopt a standalone climate report, separate from a registrant’s annual report, due no sooner than 180 days after a registrant’s fiscal year-end.

4. The Commission Should Expand the Safe Harbor for Scope 3 Emissions Disclosures and Other Forward Looking Statements

Under the Proposal, Scope 3 disclosures are deemed not fraudulent unless made or reaffirmed “without a reasonable basis” or disclosed “other than in good faith.”¹⁴ However, we believe this would not serve as a meaningful deterrent to plaintiffs’ class action counsel, who routinely plead around this requirement. To remedy these concerns, we believe the Commission can and should provide a more robust safe harbor that precludes all implied private rights of action alleging defects in quantitative Scope 3 disclosures and other highly variable disclosures such as scenario analysis and transition planning. The Commission’s authority to disimply the Rule 10b-5 private right of action for Scope 3 and other highly variable disclosures is supported by prominent legal scholars and the U.S. Supreme Court.¹⁵ A robust safe harbor of this nature would provide the appropriate level of liability protection while still incentivizing registrants to provide fulsome disclosures. Many of the disclosures required by the Proposal are novel in nature, and practices and procedures for such disclosures are currently in development. For example, disclosures on net zero targets and transition plans are only recently being made, and in some contexts might become subject to change as new scientific information becomes available and the costs of clean energy technologies decrease. Under our proposed recommendation, the SEC and the Department of Justice would retain the authority to institute proceedings alleging defects in such disclosures—providing the intended deterrent effect and ability to police against fraud—while

¹³ See U.S. Environmental Protection Agency, *Frequent Questions about EPA’s Quality Program*, (2021), available at <https://www.epa.gov/quality/frequent-questions-about-epas-quality-program>.

¹⁴ See proposed 17 CFR § 229.1504(f).

¹⁵ See Joseph A. Grundfest, *Disimplying Private Rights of Action Under the Federal Securities Laws: The Commission’s Authority*, 107 *Harvard Law Review* 961-1024 (1994); See *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc., et al.*, 552 U.S. 148 (2008).

minimizing the externalities, both in terms of increased insurance premiums and legal fees likely to accompany such novel and expansive disclosures.

More generally, the Proposal would require expansive new disclosures that are unprecedented in scope and level of detail, but without adequately addressing the increased liability that will come with such new types and quantities of disclosure. The Proposal notes that various required new disclosures such as targets, goals, and scenarios may be forward-looking in nature and therefore covered by the Private Securities Litigation Reform Act (“PSLRA”) safe harbor if all conditions are met; however, the Proposal does not seem to recognize or acknowledge the excessive liability risk that will be created by requiring this type of information to be filed in Form 10-K, which risk cannot adequately be addressed through the SEC’s reference to the potential availability of the PSLRA for forward-looking statements. Any final rule should, at a minimum, make clear that the PSLRA safe harbor is available to protect this information.

5. The Commission Should Include a Liability Safe Harbor for Any Director Designated a “Climate Change Expert”

The Proposal does not include a safe harbor from liability for any director designated as a climate expert, which departs from recent SEC precedent. For example, under the Commission’s recently proposed rules on Cybersecurity Risk Management, Strategy, Governance and Incident Disclosure, the cybersecurity director expertise disclosure includes a safe harbor in proposed Item 407(j)(2).¹⁶ This safe harbor provides that a director with expertise in cybersecurity will not be deemed an expert for any purpose, including, without limitation, for purposes of liability under Section 11 of the Securities Act of 1933 (the “Securities Act”).¹⁷ A similar safe harbor exists for directors determined to be audit committee financial experts, which uses nearly identical language.¹⁸ Given the Commission’s precedent, such a safe harbor should be included if the Commission adopts the proposed director climate-related expertise disclosure.

6. The Commission Should Revise the Definition of “Climate-Related Risks” to Exclude “Value Chains”

The Proposal requires registrants to describe “climate-related risks” that are reasonably likely to have a material impact on the registrant’s business or consolidated financial statements as manifested over the short-, medium-, and long-term.¹⁹ As proposed, “climate-related risks” would mean 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.²⁰ By defining climate-related risks (and climate-related opportunities) to include actual or potential negative impacts on a registrant’s value chains, the Proposal would require an issuer to assess its exposure to climate-related risks well beyond its own operations, including “supplier activities” and potentially consumers or customers.²¹ In our view, the required disclosures should focus on risks that are material or expected to become material to the registrant, not entities beyond the registrant’s control. Registrants should not be required to speak on behalf of third parties in their periodic and annual reports. Moreover, requiring registrants to do so will require registrants to independently analyze possible climate-related risks to suppliers, partners, customers, and other

¹⁶ See proposed 17 CFR § 229.407(j)(2).

¹⁷ See *id.*

¹⁸ See proposed 17 CFR § 229.407(d)(iv).

¹⁹ See proposed 17 CFR § 229.1502(a).

²⁰ See proposed 17 CFR § 229.1500(c).

²¹ See proposed 17 CFR § 229.1500(t).

third-parties, resulting in disclosure burdened with assumptions and uncertainties and increasing registrant costs without commensurate benefits. We are also concerned that, due to the inherent lack of control, registrants could be incentivized to draft boilerplate disclosures that do not provide investors with decision-useful information. We therefore recommend that the Commission revise the definition of “climate related risks” to exclude “value chains.”

7. Disclosures Should Be Furnished Rather than Filed

Under the Proposal, all of HP’s climate-related disclosures would be treated as “filed” rather than “furnished.”²² This would mean that, in addition to general anti-fraud liability under Rule 10b-5 of the Securities Exchange Act of 1934 (the “Exchange Act”), such disclosures would be subject to Section 18 of the Exchange Act, and, if incorporated by reference into a Registration Statement, subject to liability under Sections 11 and 12 of the Securities Act.

We believe that applying the liability standard applicable to information furnished rather than filed strikes the right balance. While the Commission acknowledges that existing safe harbors for forward-looking statements would be available for aspects of the proposed disclosures, many of the proposed new disclosures are historical in nature and thus the safe harbors will not apply. As outlined above, HP and other registrants, especially smaller reporting companies, will face challenges and costs complying with these disclosures, many of which ask us to opine on issues with significant assumptions, uncertainties and variabilities, such as disclosing our scenario analysis and transition plans. We believe that the appropriate balance between protecting investors and facilitating reliable disclosures can be achieved under general anti-fraud liability (Exchange Act Section 10(b) and Rule 10b-5) without subjecting registrants to heightened liability associated with information that is filed with the SEC.

8. The Commission Has Underestimated the Costs of Complying with the Proposal, and Should Therefore Provide More Time for Initial Compliance

We believe the Commission has drastically underestimated the likely costs to registrants of complying with the Proposal, both initially and on an ongoing or annual basis, and that these likely costs at least merit a longer lead time until initial compliance is required.²³ Registrants, including HP, will need to enhance or implement new policies, processes, controls, and systems solutions to comply with the rule, which will take time to establish and implement. In our view, the Proposal’s cost estimate does not adequately take into account these time demands or costs. We expect that our costs and the time required to comply with the Proposal, in the first instance, and on an ongoing annual basis, will be substantially higher than the Commission has estimated.

Assuming final rules are adopted and effective by the end of calendar year 2022 (as the Proposal suggests), the Proposal would require large accelerated filers with the December 31st fiscal year end to first comply and disclose (except with respect to Scope 3 emissions) in its 10-K covering fiscal year 2023 (filed in early 2024) or large accelerated filers with a different fiscal year end, such as HP, in 10-Ks covering fiscal year 2024 (filed in later 2024). We believe that all large accelerated filers should be provided with at least two years to prepare for initial compliance and disclosure. An appropriate compliance timeline for a large accelerated filer would therefore be at

²² The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21334, 21411 (Apr. 11, 2022).

²³ *Id.* at 21439.

least one year between adoption of the final rule and the beginning of the first reporting period to which the rules would apply.

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We thank the Commission for the opportunity to submit comments for its consideration, and we welcome the opportunity to be a part of this process. We would like to reiterate our support for the Commission's important steps toward standardizing climate-related disclosures. We look forward to continuing to work with the Commission on the Proposal, as well as any future rulemakings and guidance on the subject.

Sincerely,



Rick E. Hansen
Deputy General Counsel – Corporate
Corporate Secretary

cc: Gary Gensler, Chair of the SEC
Hester M. Peirce, Commissioner
Allison Herren Lee, Commissioner
Caroline A. Crenshaw, Commissioner
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