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June 17, 2022

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

Via: rule-comments@sec.gov

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

Dear Ms. Countryman:

The Travelers Companies, Inc. ("Travelers") appreciates the opportunity to provide comments on proposed rule release Nos. 33-11042, 34-94478, File No. S7-10-22 with the above captioned title (the "proposed rule") as issued by the Securities and Exchange Commission (the "SEC") on March 21, 2022.

Travelers provides a wide range of commercial and personal property and casualty insurance products and services to businesses, government units, associations, and individuals. A member of the S&P 500 and the Dow 30 and one of the oldest insurance organizations in the United States, dating back to 1853, Travelers has successfully managed risk for its customers for over 160 years. Our property and casualty insurance operations expose us to claims arising out of small weather events up to large catastrophes.

Travelers is committed to a long-term sustainable approach to protecting the environment as well as being a responsible steward of its shareholders' capital. While we appreciate the SEC's efforts, we believe that there are significant technical accounting and financial reporting issues with the proposed rule. Our comments largely focus on the application of the proposed rule to companies in the property casualty industry and focus on three particular challenges posed by the proposed rule:

1. The terms “climate” and “weather” are used interchangeably without regard to the important and commonly accepted distinction between these two terms.
2. Significant elements of the proposed rule run contrary to well-established accounting principles, guidance, and literature.
3. The science and technology necessary to achieve the stated goals of the proposal to provide “consistent, comparable, reliable information for investors,” especially in the property casualty industry, do not presently exist. As a result, the adoption of the proposed rule, as drafted, would result in requiring disclosure that would be misleading.

“Climate-Related Metrics” and Related Disclosures

As a property and casualty insurer, Travelers monitors, assesses, and responds to the risks and opportunities posed by changing climate conditions in the normal course of underwriting and is acutely aware of current limitations on distinguishing and measuring the effects of weather versus the impact of climate change.

As a point of reference, the terms “weather” and “climate” describe the same thing – i.e., the state of the atmosphere – but along significantly different time horizons[1]. Weather is a temporary state of the atmosphere at a point in time, while climate is the average of weather pattens for a specific region over a long period of time, usually measured over several decades[2].

Notwithstanding this critical distinction, the proposed rule uses the terms “weather” and “climate” interchangeably throughout the text, combines the two terms, and incorrectly labels them collectively as “climate-related”, beginning with § 210.14-02, *Climate-related metrics* and § 229.1500, *Definitions*. In particular, subsection (c) of § 210.14-02 states, *Climate-related metrics:*

> *Financial impacts of severe weather events and other natural conditions*. Disclose the impact of severe weather events and other natural conditions, such as flooding, drought, wildfires, extreme temperatures, and sea level rise on any relevant line items in the registrant’s consolidated financial statements during the fiscal years presented. Disclosure must be presented, at a minimum, on an aggregated line-by-line basis for all negative impacts and, separately, at a minimum, on an aggregated line-by-line basis for all positive impacts.

[1] See National Oceanic and Atmospheric Administration, “What is the difference between weather and climate?” at https://www.noaa.gov/facts/weather_climate html

[2] See U.S. Geological Survey, Frequently Asked Questions: “What is the difference between weather and climate change?” at https://www.usgs.gov.

The term *climate-related metrics* has been used in the proposed rule to include the financial impact of events that may or may not be the result of climate change and has the effect of ignoring the distinction between weather and climate, i.e., measures over different timeframes. The resulting disclosure would portray the aggregated impacts resulting from all weather events as being climate related.

Property casualty companies evaluate the impacts of storm losses as part of "weather" and disclose the impacts of such events if they meet the insurer's definition of a catastrophe loss, e.g., the event has been designated a catastrophe by a third-party insurance service organization and exceeds a numerical threshold determined to be meaningful by the company. Despite the elevated amounts, even losses disclosed as catastrophe-related are generally the result of weather and insurers do not have the ability to determine whether some or all the losses are the result of climate change. The same is true of losses related to wildfires. While adding the impacts of all these events together and labeling them as "climate-related" for purposes of the proposed rule is appealing in that the approach bypasses any discussion of why the impacts are not separately distinguishable, it is unclear how the resulting disclosure will be useful to investors given its imprecision, and such disclosure could have the unintended effect of being misleading**.**

The proposed rule is also unclear how a "severe weather event" would be defined or applied. Numerous industries, including construction, shipping, transportation, and utilities, regularly deal with disruptions from seasonal storm activity. As drafted, the proposed rule suggests that companies would now have to assume all disruptions from a severe weather event are the result of climate change. As an insurer that writes coverage and pays claims related to such events, it is not clear to us how companies would isolate the financial impacts of severe weather and other natural conditions using any threshold applied to individual financial statement line items. In identifying disclosures that could be required under subsection (c) of § 210.14-02, the proposed rule highlights "changes to revenue or costs from disruptions to business operations or supply chains." While there may be certainty with regard to individual contracts when the contracts have well-defined terms and conditions -- e.g., quantities, prices, or other fixed terms that may be disrupted -- certainty will not exist in most instances. Line items in a registrant's financial statements can be impacted by multiple factors or only indirectly impacted and attempting to isolate and quantify the impact of climate involves uncertainty and will require significant judgment and estimation to disclose. This uncertainty is especially troublesome for property casualty insurers given the inherent estimation difficulty associated with the accounting for claim reserves. In most cases, the effect of a particular risk factor on estimates of claim reserves cannot be isolated. The result is a proposed rule that registrants would, at a minimum, have significant difficulty complying with and would lead to disclosure that would lack comparability across insurers and pose the significant risk that the disclosures would be misleading.

As referenced above, subsection (c) of § 210.14-02 includes "changes to total *expected* insured losses due to flooding or wildfire patterns" as an example of an impact from a severe weather event. Under generally accepted accounting principles in the United States (U.S. GAAP), property casualty insurers are required to apply the accounting guidance in FASB Accounting Standards Codification 944, *Financial Services – Insurance* (Topic 944)[3]. The proposed requirement to disclose "expected insured losses" stands in direct conflict with the recognition criteria in Topic 944, as insurers are only allowed to recognize losses that have been *incurred*. Further, Topic 944 provides no definition of or measurement criteria for *expected* losses. As a result, the requirement to disclose changes to total expected insured losses would be contrary to the requirement in § 210.14-01 *Climate-related disclosure instructions* for a property casualty registrant to apply the same accounting principles that it is required to apply in preparation of the rest of its consolidated financial statements included in its periodic filings with the SEC.

Given the challenges identified above, we urge the SEC to revisit the language in § 210.14-02 of the proposed rule. We believe that the SEC should be careful to draw a distinction between weather and climate-related events that is consistent with commonly accepted definitions of the terms and, consistent with other disclosure requirements, to allow registrants more discretion in evaluating the materiality of the items required to be disclosed.

Lastly, property casualty insurers already separately disclose the impacts of loss contingencies related to weather events if the amounts involved are meaningful in accordance with FASB Topic 450 – *Contingencies*[4]. Additionally, in accordance with SEC requirements, property casualty insurers provide in tabular format a disclosure in Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations[5] of the amount of losses recorded by the insurer for each significant catastrophe that occurred during the three years presented in the current income statement along with the amount of net unfavorable (or favorable) prior year reserve development (i.e., the change in estimated ultimate losses that was recorded during the year) for each catastrophe, and the estimate of ultimate losses for each catastrophe at December 31, of each of the years presented.

<u>Fundamental Characteristics of Financial Reporting and Disclosure</u>

Financial Accounting Standards Board ("FASB") Concept Statement No. 8, *Conceptual Framework for Financial Reporting* (CON 8)[6], provides the fundamental qualitative characteristics of financial reporting and disclosure. The fundamental qualitative

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[3] See FASB Topic 944, *Financial Services – Insurance*
[4] See FASB Topic 450, *Contingencies*
[5] This requirement was developed through the SEC comment letter process
[6] See FASB Statement of Financial Accounting Concepts No. 8, as amended, August 2018

characteristics of information provided in financial statements are *relevance* and *faithful representation*. We respectfully submit that significant portions of the proposed rule are contrary to these principles as set forth in CON 8.

Relevance

Relevant financial information is described as information capable of making a difference in the decisions made by users -- in this case investors -- as the primary responsibility of the SEC is to protect investors. The information should be capable of making a difference in decisions even if some users choose not to take advantage of the information or are already aware of the information from other sources.

Financial information is capable of making a difference in users' decisions if it has predictive value, confirmatory value, or both. Financial information has predictive value if it can be used as an input to processes employed by users to predict future outcomes; financial information with predictive value can be employed by users in making their own predictions. Financial information has confirmatory value if it provides feedback (i.e., confirms or changes conclusions) about previous evaluations. The predictive value and confirmatory value of financial information are interrelated. Information that has predictive value often also has confirmatory value.

Because weather and climate change occur on different time horizons and there is currently neither credible nor reliable methodology to separate the impacts, we believe the proposed disclosure has neither predictive value nor confirmatory value, resulting in misleading disclosure that generally violates the accounting concept of relevance as described in CON 8.

Faithful Representation

Financial statements, including the related disclosures, represent economic phenomena in words and numbers. To be useful, financial information should not only represent relevant phenomena; it also must faithfully represent the phenomena that it purports to represent. CON 8 provides that for information to provide faithful representation, a depiction should have three characteristics: the information should be *complete, neutral,* and *free from error*.

- **Complete.** A complete depiction includes one that provides all the information necessary for a user to understand the phenomenon being depicted, including all necessary descriptions and explanations. For some items, a complete depiction also may entail explanations of significant facts about the quality and nature of the items, factors and circumstances that might affect their quality and nature, and the process used to determine the numerical depiction. Because there is currently no credible/reliable methodology to separate the impacts of weather

and climate, the proposed rule does not provide a complete depiction and would result in misleading disclosure by combining the impacts of weather and climate and incorrectly labeling the combined impact as climate.

- **Neutral.** A neutral depiction is without bias in the selection or presentation of financial information. A neutral depiction is not slanted, weighted, emphasized, deemphasized, or otherwise manipulated to increase the probability that financial information will be received favorably or unfavorably by users. Neutral information should be capable of making a difference in users' decisions. By combining the impacts of weather and climate and labeling the combined impact as climate, the proposed rule provides a biased, incorrect characterization of the financial impacts resulting from weather events.

- **Free from error.** Faithful representation does not mean accurate in all respects. A representation of an estimate, however, can only be faithful if the amount is described clearly and accurately as being an estimate, the nature and limitations of the estimating process are explained, and no errors have been made in selecting and applying an appropriate process for developing the estimate. Since it is not currently possible to apply an appropriate process for developing an estimate of the separate impact of weather versus climate, it would not be possible to provide disclosure that meets this characteristic.

Due to the current technical limitations of separating the impact of weather versus climate, the proposed rule would not and cannot provide a faithful representation of the financial impact of climate change and would pose a significant risk of being misleading, including, for example, by suggesting that all large storm losses are the direct result of climate change.

We offer a couple of examples to illustrate this point:

- One example is the occurrence of a hurricane in Florida. It is estimated that if a storm of the same size, intensity, and storm path as Hurricane Andrew were to occur today, total insured losses would exceed the losses that occurred in August 1992 by ten times. The disclosures required in the proposed rule would result in investors concluding that the increased insured losses are the result of climate change when the entirety of the increase would actually be, in fact, due to changes in demographics, i.e., increases in population, population density, and insured property values.

- As another illustration, there have been recurring tornado and hail events over time whose severity have been correlated, at least in part, to the Pacific Decadal Oscillation (PDO), a naturally recurring pattern of ocean-atmosphere climate variability centered over the mid-latitude Pacific basin. Attempting to attribute

> some or all weather events to climate change when some of such events are the result of the PDO provides no context to the users of the financial statements and incorrectly implies that the events are the result of climate trends. The proposed rule disregards current scientific limitations in determining the extent to which the severity of an event has been caused by naturally recurring patterns such as the PDO as opposed to changing climate conditions.

The proposed rule has the effect of inappropriately conflating weather and climate without addressing the difference between the two and does not provide any context to users of the financial statements. In contrast, existing disclosure requirements to which property casualty insurers are subject were developed within the accounting and disclosure framework embedded in U.S. GAAP and already provide relevant information to investors that are faithful representations of the financial impacts of weather, providing both predictive and confirmatory value to investors.

Disclosure Threshold

Inconsistency with Fundamental Principles of Materiality

Through its long-standing, broadly observed guidance, the staff of the SEC has consistently underscored the importance of evaluating both quantitative and qualitative information when determining materiality. Although a quantitative threshold may be used as a starting point in assessing materiality, according to the SEC staff, a final determination of materiality can only be made after consideration of **both** quantitative and qualitative factors based upon the relevant facts and circumstances. A materiality assessment must also consider the impact of all relevant events or factors, both individually and in the aggregate, in order to properly assess whether the information is relevant to a reasonable person relying on the financial statements and/or disclosures.

Pursuant to Staff Accounting Bulletin ("SAB") No. 99, for example, the SEC staff explicitly "reminds registrants and the auditor of their financial statements that exclusive reliance on [a quantitative rule of thumb] or any percentage or numerical threshold has no basis in the accounting literature or the law."[7] Similarly, SAB No. 108 provides that "a materiality evaluation must be based on all relevant quantitative and qualitative factors."[8] Most recently, in a speech titled "Assessing Materiality: Focusing on the Reasonable Investor When Evaluating Errors", Paul Munter, the SEC's Acting Chief Accountant, remarked that "[a] materiality analysis is not a mechanical exercise, nor should it be based solely on a quantitative analysis. Rather registrants, auditors, and audit committees need to thoroughly and objectively evaluate the total mix of information."[9]

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[7] See: https: //www.sec.gov/interps/account/sab99.htm.
[8] See: https://www.sec.gov/oca/staff-accounting-bulletin-108.
[9] See: https://www.sec.gov/news/statement/munter-statement-assessing-materiality-030922.

The proposed rule would require measurement of "severe weather events and other natural conditions" and disclosure of the impact of those events in a note to the registrant's audited financial statements if the amount of impact exceeds 1% of any relevant line item in the financial statements. This threshold is not anchored to any financial reporting concepts and, in drawing the 1% line-item threshold, would incorrectly elevate the impacts from the identified events to the single-most significant financial risk factor for registrants due to the arbitrarily low threshold.

This low threshold conflicts with how companies have historically made materiality determinations and is further at odds with the SEC staff's own guidance on providing information that would affect the decisions of a reasonable investor, i.e., information that is material. In particular, the proposed rule would apply a 1% threshold test but does not contemplate permitting any qualitative analysis of all relevant considerations in addition to quantitative factors in determining whether the disclosure would provide useful information to a reasonable investor. The omission of any consideration of qualitative factors, including whether it is probable that the judgment of a reasonable person relying upon the information would have been changed or influenced by the disclosure of such small amounts, is fundamentally inconsistent with existing accounting and reporting guidance, including SAB No. 99 and SAB No. 108. Further, under SAB 99, in addition to considering both quantitative and qualitative factors for purposes of determining materiality, the relevance of information must also be assessed at both the individual level and in the aggregate. The practice of using a stated threshold and not considering all relevant facts and circumstances could lead to an incorrect conclusion regarding both the materiality and the relevance of an item or event.

As a result of the foregoing, it is our belief that the SEC should reconsider the use of a strict quantitative threshold for disclosure that disallows the consideration of additional qualitative factors that would affect the materiality of the information being presented. Consistent with SAB No. 99 and SAB No. 108, we believe that it is in the best interests of all stakeholders, including investors, for registrants to be given the opportunity to consider both quantitative and qualitative factors for purposes of determining materiality and for the relevance of information to be analyzed at both the individual level and in the aggregate. If registrants are not permitted to take into consideration all relevant factors using a principles-based approach to determining disclosure, investors could be overwhelmed with information and misled to conclude that the disclosed climate-related effects are material to the operation of a company when this may not be the case. We urge the SEC to reconsider the propriety of a 1% threshold for disclosure.

Inconsistency with U.S. GAAP Requirements Applicable to Property Casualty Insurers

Pursuant to the proposed rule, registrants would be required to disclose the impact of "severe weather events and other natural conditions, such as flooding, drought, wildfires,

extreme temperatures, and sea level rise on any relevant line items in the registrant's consolidated financial statements during the fiscal years presented" under subsection (c) *Financial impacts of severe weather events and other natural conditions* of § 210.14-02 *Climate-related metrics*.

As cited above, subsection (c) also states:

> Disclosure must be presented, at a minimum, on an aggregated line-by-line basis for all negative impacts and, separately, at a minimum, on an aggregated line-by-line basis for all positive impacts.

Earlier in the proposed rule, the guidance in subsection (c) *Basis of calculation* of § 210.14-01 *Climate-related disclosure instructions*, states that a registrant must:

> (1) Use financial information that is consistent with the scope of the rest of its consolidated financial statements included in the filing; and
>
> (2) Whenever applicable, *apply the same accounting principles* that it is required to apply in the preparation of the rest of its consolidated financial statements included in the filing.

While the guidance in subsection (c) of the *Climate-related disclosure instructions* is not discussed in any detail, the anticipated presentation under the proposed rule stands in direct conflict with U.S. GAAP as it relates to the accounting required of property casualty insurers.

There are often two positive impacts that affect property casualty insurers in the accounting for incurred losses related to insured events, including hurricanes and wildfires, whether or not the amounts involved are large enough to be disclosed as a catastrophe loss:

1. Subrogation - the right held by most insurance carriers to legally pursue a third party that caused an insurance loss to the insured. This right is exercised to recover from the responsible party the amount of the claims paid by the insurance carrier to the insured for the loss.
2. Reinsurance - an insurance company may obtain indemnification against claims associated with the insurance contracts it has written by entering into a reinsurance contract with another insurance enterprise (known as the reinsurer or assuming enterprise). The insurer pays (cedes) an amount to the reinsurer, and the reinsurer agrees to reimburse the insurer for a specified portion of claims paid under the reinsured insurance contracts.

As stated earlier, property casualty insurers are required to apply the accounting guidance in FASB Accounting Standards Codification 944, *Financial Services—Insurance* ("Topic 944") under U.S. GAAP. Topic 944 provides that property casualty insurers should report the effects of subrogation and reinsurance on a net basis in the insurer's income statement. The line item for claims and claim adjustment expense is a prominent line item in the insurer's income statement and represents the amount incurred by an insurer to settle the claims of its policyholders, including the associated expense of settling those claims, less the incurred impacts of subrogation and reinsurance. While this line item would be considered a "negative impact" in the proposed rule, it is in fact a net negative impact due to the positive impacts of subrogation and reinsurance being netted against the negative impact of claims and claims adjustment expense. Additionally, the cost of obtaining reinsurance (a negative impact to earned premium) is prescribed to be netted against earned premium (a positive impact to net income).

The proposed guidance in subsection (b) *Disclosure thresholds,* of § 210.14-02 *Climate-related metrics,* includes the following:

1. Disclosure of the financial impact on a line item in the registrant's consolidated financial statements pursuant to paragraphs (c) and (d) of this section (including any impacts included pursuant to paragraphs (i) and (j) of this section) is not required if the sum of the absolute values of all the impacts on the line item is less than one percent of the total line item for the relevant fiscal year.
2. Disclosure of the aggregate amount of expenditure expensed or the aggregate amount of capitalized costs incurred pursuant to paragraph (e) and (f) of this section (including any impacts included pursuant to paragraphs (i) and (j) of this section) is not required if such amount is less than one percent of the total expenditure expensed or total capitalized costs incurred, respectively, for the relevant fiscal year.

Section (c) *Financial impacts of severe weather events and other natural conditions,* of § 210.14-02 *Climate-related metrics,* requires disclosure to be provided on an aggregated line-by-line basis for negative impacts and, separately, at a minimum, on an aggregated line-by-line basis for all positive impacts. This anticipated presentation is inconsistent with long-standing accounting requirements generally applied by property casualty insurers in the preparation of their consolidated financial statements. The contradiction between these sections of the proposed rule (separately aggregating positives and negatives and applying the same accounting principles required to be applied in the preparation of the financial statements) would occur in the following manner:

- Earned premium (the primary revenue for property casualty insurers) is required to be reported net of the cost of reinsurance under Topic 944.
- Claims and claim adjustment expense is required to be reported net of subrogation and reinsurance under Topic 944.
- Aggregated line-by-line basis for all positive impacts and negative impacts would require separation of earned premium from the cost of reinsurance (these amounts are reported net under Topic 944).
- Additionally, aggregated disclosure of subrogation and reinsurance impacts would require separation from the amounts of claims and claim adjustment expense (subrogation and reinsurance are required to be netted against the aggregate claims and claim adjustment expense in the income statement under Topic 944).

The financial reporting systems of property casualty insurers are not currently designed to accommodate the disclosure that would be required by the proposed rule. Furthermore, this contradiction among the various sections of the proposed rule is likely to cause significant confusion among preparers, auditors, and users of the financial statements and, due to the likely differences in interpretation and application, result in disclosures that are not comparable across insurers.

Scope 3 GHG Disclosures

Notwithstanding the SEC's understandable eagerness to require and regulate climate-change disclosures, the fact is that Scope 3 greenhouse (GHG) disclosure standards, definitions, and techniques are in their infancy and are still developing, as evidenced by the lack of consensus on what should be included in the 15 categories of Scope 3 GHG emissions as discussed in the guidance issued by the Greenhouse Gas (GHG) Protocol[10]. Without an accepted methodology for calculating these emissions, the disclosure required under the proposed rule would not further the goals of greater transparency as different companies will almost certainly report based on different inputs, definitions, and estimation techniques.

In particular, the mandated disclosure of Scope 3 GHG emissions under the proposed rule presents a number of significant challenges to property casualty insurers, including:

- It is unclear whether the SEC contemplates that Scope 3 GHG emissions should include only those 15 categories enumerated in the GHG Protocol or whether Scope 3 GHG emissions go beyond that. The text of the proposed rule does not

[10] Greenhouse Gas Protocol provides standards, guidance, tools, and training for business and government to measure and manage climate-warming emissions.

appear to closely conform to the GHG Protocol. The emissions associated with an insurer's underwriting portfolio do not fall within any of the GHG Protocol's 15 categories of Scope 3 emissions; however, the lack of clarity in the SEC's proposed rule could lead insurers to interpret the rule to mean that the SEC intends "insured emissions" to be included among Scope 3 GHG emissions as well.

- The proposed rule requires the disclosure of Scope 3 emissions only if material to the company. This materiality assessment (even when insurers believe that their Scope 3 GHG emissions are not material) could require insurers to engage in significant work and effort involving significant time and resources to conclude the emissions are not material. Insurers may conclude that they need to estimate their Scope 3 GHG emissions to simply make and/or support a materiality determination. While we are concerned about the effort and costs that this type of assessment would require, we agree that it should be left to the registrant to make the determination consistent with the other types of disclosure decisions that registrants currently make in the preparation of their financial statements. We also recommend that this determination should be made by registrants with regards to Scope 1 and Scope 2 GHG emission rather than applying an artificially low threshold of 1%.
- The proposed rule states: "when assessing the materiality of Scope 3 GHG emissions, registrants should consider whether Scope 3 emissions make up a relatively significant portion of their overall GHG emissions." Because of the low emissions from insurers' operations, Scope 3 GHG emissions will likely comprise a "relatively significant" portion of their overall GHG emissions – likely over the 40% threshold suggested elsewhere in the release. This approach would not address materiality in the same manner that amounts would be evaluated for materiality for financial reporting and under the Supreme Court definition of "materiality". Disclosing that the Scope 3 GHG emissions of a registrant are a larger percentage of the registrant's total (immaterial) emissions is not information that has confirmatory or predictive value.

Existing estimation frameworks were primarily developed for industries that consume components used in a manufacturing process or the production of industrial outputs and does not address many of the activities of financial services companies, including property casualty insurance companies. There are ongoing efforts to identify and capture other activities in the value chain; however, these efforts have largely focused on investing and lending activities and have not addressed activities such as insurance underwriting. With regard to property casualty insurers, a significant portion of multi-line insurers' underwriting portfolios includes homeowners and personal auto insurance, as well as insurance for small and mid-sized businesses. Emissions data is generally only available from larger businesses which represent a relatively small portion of the number of insureds in a property casualty insurer's book of business. Also, given that

there are no well-established methodologies for estimating emissions for personal insurance and small businesses, it currently would be impossible to obtain emissions data from/for such customers.

It is unclear what level of effort an insurer would be expected to incur in obtaining information from its insureds, including millions of individuals and small businesses. Insurers are currently prohibited from obtaining information from applicants unrelated to underwriting risk during the underwriting process. Third-party data may be unavailable or, if it is available, the processes over the collection and processing of the data may not be available to allow an insurer to assess the quality and reliability of such data before using it.

Even an estimate of Scope 3 GHG emissions that is the culmination of several “reasonable” assumptions and acceptable methodologies can result in a wide range of outcomes that would not produce comparable disclosures across registrants. Accordingly, even if it is possible that an insured’s Scope 3 GHG emissions data could be collected, the data should not be disclosed in filings with the SEC. Instead, these disclosures should be voluntary and made in sustainability reports or other reports provided by a company outside of its filings with the SEC.

We also have an overriding concern that there will likely be significant over-counting of Scope 3 GHG emissions in the total value chain. Insurers, like companies in other industries, commonly transact with business partners in multiple upstream and downstream activities. We offer two examples to illustrate this point:

- In the first example, an insurance company (Insurer A) may write property coverage of an industrial company (Insured) while another insurer (Insurer B) writes the general liability coverage for Insured.

- In a second example, an insurance company (Insurer) may write property coverage for an industrial company (Insured) and cede a portion of its risks to a reinsurer.

In both examples, the total amount of disclosed GHG emissions is likely to be overstated as each participant in the value chain reports its estimate of total emissions in its value chain. With these common business relationships, it would be impossible or extremely difficult to avoid over-counting of the GHG emissions of the industrial company with each insurance and reinsurance company involved in the business relationship reporting the total Scope 3 GHG emissions for entities/investments in their value chain. This would either put a significant burden on investors to unwind and evaluate the impacts of the overlapping information among the companies or worse yet, result in investors using significantly inflated emissions data in their analysis, or more

likely, not taking the data into account in their analysis. As a result, the over-counting of GHG emissions could mislead investors to act on incorrect information.

Likewise, apportioning the emissions data of third parties to a registrant is unworkable. We do not believe there are reliable ways to apportion the amount of a third party's GHG emissions to be included in the registrant's own GHG footprint. Any apportionment methodology is likely to produce inconsistent results as they are likely to be applied differently by registrants. Moreover, requiring registrants to include in their SEC filings – and therefore take on liability for – disclosures of third parties over whom they do not exercise any control is inappropriate and unprecedented.

We are also concerned about the likely outcome of requiring the disclosure of Scope 3 GHG emissions. Assuming property casualty insurers are able to obtain Scope 3 GHG emissions information (however defined under the proposed rule) from their policyholders without violating insurance regulatory requirements, lower-income communities could be adversely impacted if insurers are pressured to stop writing certain lines of business as residents of those communities, for example, often own older automobiles. The proposed rules may also have a disproportionate impact on small businesses, which do not have the resources or scale to afford calculating their emissions.

Attestation Requirement

The attestation requirements imposed by section § 229.1505 *Attestation of Scope 1 and Scope 2 emissions disclosure*, are problematic and we believe likely to cost registrants far more than the estimate contained in the proposed rule.

Under the proposed rules in this section regarding attestation for large, accelerated filers, Scope 1 and Scope 2 GHG emissions would be subject to limited assurance in the second year of disclosure and reasonable assurance in the fourth year of disclosure.

In addition to being inconsistent with the SEC's longstanding approach to the disclosure of qualitative and quantitative information outside the financial statements, attestation over Scope 1 and Scope 2 GHG emissions is problematic for several reasons. The non-financial metrics that would be disclosed under the proposed rule were developed outside of a financial reporting framework and were not developed using a deliberative approach that seeks a balance of input from various stakeholders including users, preparers, and auditors of financial statements. For climate-related disclosures, the reporting standards are not fully developed enough to establish criteria for reliably measuring GHG emissions or quantifying other financial metrics such as estimating the amount that climate change may have intensified the effect of weather events on various financial statement line items.

The SEC should consider other alternatives rather than requiring an attestation around non-financial measures that would be inserted into what is primarily a discussion of the company's financial results of operations. For example, a registrant should be allowed to include the disclosures in a separate report addressing environmental, social, and governance (ESG). Once the methodologies for estimation of GHG emissions become more evolved, registrants could then obtain an agreed upon procedure over the disclosed emissions.

If the SEC ultimately determines that the disclosures should be subject to an attestation, the attestation methodology with respect to GHG emissions must necessarily be allowed time to develop more fully to narrow the potential approaches and methodologies before an attestation requirement is required. The proposed rule states that the attestation standard used must be "publicly available at no cost and have been established by a body or group that has followed due process procedures" and suggests the American Institute of Certified Public Accountants attestation standards as an example of an acceptable approach to developing attestation standards. Instituting an attestation requirement before any attestation standards have been developed is extremely problematic and is an invitation for confusion by all stakeholders. Some of the concepts from generally accepted auditing principles may well be appropriate for an attestation standard and the framework established by COSO[11] could likely be applied in evaluating controls over the estimation process. As acknowledged in the proposed rule, however, there are currently no such standards in place. As a result, there needs to be a sufficient transition period to allow for the development and approval of attestation standards, as well as training and issuing of credentials to qualified firms and individuals.

With respect to obtaining an attestation, there is also a problem with the timing of obtaining the attestation and including it in the timely filing of required reports with the SEC. Scope 1 and Scope 2 GHG emissions data is currently not available until about six months after the calendar year end. This has been the case with our company, which is one of the reasons we provide our sustainability reports mid-year. For companies with a calendar year end, obtaining GHG emissions data and an attestation from a qualified independent firm would make the timely filing of a registrant's Form 10-K impossible.

Finally, we believe that the costs associated with the attestation will be significantly greater than the amount suggested in the proposed rule and would far outweigh any potential benefit.

[11] See The Committee of Sponsoring Organizations of the Treadway Commission, see http://www.coso.org

Equity Method Investments

Subsection (b)(2) in § 229.1504 (Item 1504) *GHG emissions metrics* of the proposed rule states the following when calculating emissions pursuant to paragraph (b)(2) of this section:

> 2. When calculating emissions pursuant to paragraph (b)(1) of this section, a registrant may exclude emissions from investments that are not consolidated, are not proportionately consolidated, or that do not qualify for the equity method of accounting in the registrant's consolidated financial statements.

We note that proportional consolidation in U.S. GAAP is prohibited and may only be used in limited circumstances by foreign private issuers when SEC staff has granted requests to present financial statements using U.S. GAAP except for investments in joint ventures that are reported using the proportionate consolidation method in accordance with the foreign jurisdiction's local accounting guidance.

Under the FASB guidance contained in ASC 323, *Investments -- Equity Method and Joint Ventures*, an investment of "20 percent or more of the voting stock of an investee shall lead to a *presumption* that in the absence of predominant evidence to the contrary an investor has the ability to exercise significant influence over an investee. Conversely, an investment of less than 20 percent of the voting stock of an investee shall lead to a presumption that an investor does not have the ability to exercise significant influence unless such ability can be demonstrated." Under ASC 323-30-S99-1, however, the SEC requires that the equity method of accounting be applied to investments with ownership interests greater than 3-5% in certain partnerships, unincorporated joint ventures, and limited liability companies. The SEC staff has indicated that the equity method is appropriate for these investments unless an investor's interest has virtually no influence over operating and financial policies of the investee, which has been viewed in practice to be less than 3-5%. The guidance in ASC 323-30-S99-1 effectively created a bright line for the application of the equity method of accounting for investees over which the investor has either "virtually no influence" versus *some* influence over the investee's operating and financial policies. As a result, most companies, including property casualty insurers, with passive investments in limited partnership, private equity, and joint venture investments use the equity method for all such investments.

Pursuant to the proposed rule as reproduced above, registrants would be required to collect and report Scope 1 and Scope 2 GHG emissions data for its equity method investments. Property casualty insurance companies typically have a significant portfolio of these types of investments, the great majority of which are funds comprising portfolios of numerous small, private entities that would have extreme difficulty compiling emissions data, assuming such funds are also able to obtain such

information from their investees. As a result, the proposed rule requiring emissions data for equity method investees is in the best of circumstances unreasonably burdensome, and, in all practicality, very likely not possible. Given the low bar for the determination of an equity method investment under ASC 323-30-S99-1, the proposed rule would require registrants to collect information from a fund over which the registrant may not have “significant influence” that holds investment over which the fund itself may also not have “significant influence”. Moreover, the process required to compile an estimate of these investees’ emissions would necessarily be based on third-party information, including proxy or other data, and it is questionable whether the resulting information would be representative of emissions within a reporting entity’s control or influence.

Importantly, we note that the disclosure of equity method investments contemplated by the proposed rule is also at odds with the approach used in the GHG Protocol, which allows reporting companies a degree of discretion as to how GHG emissions from certain investments are disclosed as described in the following guidance for Category 15: Investments[12]:

> If not included in the reporting company’s scope 1 and scope 2 inventories: Account for *proportional scope 1 and scope 2 emissions* of equity investments* that occur in the reporting year in scope 3, category 15 (Investments). Companies may establish a threshold (e.g., equity share of 1 percent) below which the company excludes equity investments from the inventory, if disclosed and justified.
>
> *Proportional emissions from equity investments should be allocated to the investor based on the investor’s proportional share of equity in the investee. Proportional emissions from project finance and debt investments with known use of proceeds should be allocated to the investor based on the investor’s proportional share of total project costs (total equity plus debt). Companies may separately report additional metrics, such as total emissions of the investee, the investor’s proportional share of capital investment in the investee, etc.

In sum, Scope 1 and Scope 2 GHG emissions data should not be required for all equity method investees. The proposed requirement to include Scope 1 and Scope 2 GHG emissions for all equity method investments is overly burdensome given that, under SEC guidance, registrants must apply the equity method to investments in most limited partnerships, joint ventures, and certain other alternative investments even though in many cases the registrant’s interest in those entities is well below 20%.

If the SEC concludes that emissions of equity method investees should be disclosed, we believe it is more appropriate to include disclosures with respect to Scope 3 emissions

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[12] See Category 15 Investments http://www.ghgprotocol.org/sites/default/files/standards_supporting/Chapter15.pdf

(where such emissions are required to be disclosed) consistent with existing GHG emissions frameworks, including the GHG Protocol. At the very least, the requirement to report Scope 1 and Scope 2 GHG emissions for equity method investees should be limited to those equity method investees where the registrant exercises significant influence, not a level of influence just above "virtually no influence".

There is Significant Ambiguity Regarding How Property and Casualty Insurers Would Comply with the Requirement to Disclose Zip Code Data for Properties Subject to Physical Risks

Under proposed § 229.1502(a)(1)(i), registrants would be required to disclose zip code location data of properties subject to a physical climate-related risk reasonably likely to have a material impact on the registrant. If a natural catastrophe were considered to be a physical climate related risk under the proposed rule, since a natural catastrophe could have a material impact on a property casualty insurer, a natural catastrophe could trigger this requirement. There could be millions of insured customers whose properties are subject to the risk of a catastrophe; however, the rule clearly should not require the provision of zip codes for the millions of policyholders of an insurer that are subject to catastrophes. Accordingly, the rule should clarify that, despite the fact that the definition of "physical risks" includes risks to the operations of those with whom a registrant does business, properties of third parties (including policyholders) would not be covered by the requirements of § 229.1502(a)(1)(i).

Disclosure of Information Regarding Scenario Analyses Should Not Be Required

The requirement of § 229.1502(f) to "[d]escribe any analytical tools, such as scenario analysis, that the registrant uses to assess the impact of climate-related risks on its business and consolidated financial statements…" is broadly written and, for property casualty insurers, could include tools such as proprietary catastrophe models in the scope of the required disclosure. Insurer registrants should not be forced to disclose highly sensitive, proprietary analytical tools that are integral to their business. Such a requirement could have the unintended consequence of insurers taking actions that they otherwise would not take in order to avoid disclosure.

Registrants Should be Permitted to Elect Setting Organizational Boundaries in Accordance with the GHG Protocol

As described in § 229.1504(e)(2) of the proposed rule, each registrant would be required to "set the organizational boundaries for its GHG emissions disclosure using the same scope of entities, operations, assets, and other holdings within its business organization as those included in, and based upon, the same set of accounting principles applicable to, its consolidated financial statements." This approach could require significantly more effort and incur significantly more cost for companies that have been

voluntarily disclosing GHG emissions under the guidance of the GHG Protocol. It also may result in discrepancies between the data that was previously reported and the data required to be reported under the proposed rule. As a result, we recommend that registrants be permitted to elect setting organizational boundaries in accordance with the GHG Protocol.

Conclusion

We believe that the proposed rule represents a well-intentioned endeavor by the SEC to address and respond to reasonable investor requests for standardized climate-related disclosures in light of an acknowledged lack of consistency, comparability, and reliability of such disclosures today. As discussed above, however, registrants, especially in the property casualty industry, would face substantial implementation challenges in complying with the proposed rule if adopted as proposed, and we believe that there is a significant risk of the resulting disclosure being misleading to investors.

At its foundation, the proposed rule upends long-standing accounting principles, guidance, and literature that are the product of significant engagement – over decades -- among users, preparers, and auditors of financial statements, as well as regulators, including the SEC. Instituting any meaningful changes that run contrary to well-established accounting principles should not be taken lightly; given the substantial investment associated with any such changes to existing disclosure practices, proposed changes should be deliberated with all stakeholders through a far more methodical and iterative process and subject to a lengthier transition period than anticipated under the proposed rule. Furthermore, the desire for standardized climate-related disclosures is not sufficient to overcome the reality that there are presently significant gaps in climate-related science technology, practices, and standards that frustrate the ability of registrants to provide consistent, comparable, and reliable climate-related disclosures.

Before proceeding with a final rule, we urge the SEC to address the issues discussed in this letter, including a definition of "climate related" that is based on the commonly accepted distinction between weather and climate, and to consider elimination of the 1% disclosure threshold to provide relevant, decision-useful information to investors without the risk of significant information overload.

In concluding, we reference a quote from Justice Thurgood Marshall from the U.S. Supreme Court decision in the case of *TSC Industries v. Northway*. While this case addressed the concept of materiality and has become the basis for both legal decisions and accounting guidance[13] related to materiality, the concepts addressed in the opinion are equally relevant to the issues raised in the proposed rule:

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[13] FASB Topic 250, *Accounting Changes and Error Corrections*. See par. 250-10-S99-1

> "Some information is of such dubious significance that insistence on its disclosure may accomplish more harm than good. The potential liability for a Rule 14a-9 violation can be great indeed, and if the standard of materiality is unnecessarily low, not only may the corporation and its management be subjected to liability for insignificant omissions or misstatements, but also management's fear of exposing itself to substantial liability may cause it simply to bury the shareholders in an avalanche of trivial information -- a result that is hardly conducive to informed decision making."

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We thank you for the opportunity to comment on the proposed rule and would be pleased to discuss our views with the SEC in any forum the SEC may choose. If you have any questions or would like to discuss our comments, please feel free to call me at

Sincerely,

D. Keith Bell