June 15, 2022

Chair Gary Gensler
US Securities and Exchange Commission

Comments for S7-10-22 The Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Chair Gensler,

We welcome the work of the US Securities and Exchange Commission (SEC), and on behalf of Actual Systems, Inc., appreciate the chance to submit public comments on the important issue of Enhancement and Standardization of Climate-Related Disclosures for Investors.

Actual is a software company which enables our customers to build agile and collaborative models for complex Environmental, Social, and Governance (ESG) issues. Our tools help enterprises move from ESG commitments to action through actionable plans.

Climate change is the defining challenge of the next century. During this new era, enterprises will rise and fall by their ability to set and execute against ESG goals, core to which are climate goals. This new era will be defined by changes in consumer behavior, changing investor preferences, technological innovations, supply chain pressures, a changing regulatory landscape, and innumerable other key factors. These factors collectively lead to changes in costs of capital, as companies that have made climate-related and ESG commitments face lower costs of capital due to increased investor interest. A registrant's ability to meet its climate goals is now material to its ability to remain competitive and appealing to investors.

We would like to highlight what we view as three of the most important parts of these proposed disclosures: how registrants respond to the need for increased transparency, the importance of disclosing mitigation and adaptation plans, and the importance of disclosing the tools, methodologies, assumptions, and uncertainties associated with creating transition plans.

These disclosures present an opportunity to build trust between investors and registrants. In the last few years, over $300 billion has flowed into ESG-oriented funds, a clear signal that investors are looking to invest in companies that do good for the environment. Recent revelations of poor ESG fund construction and potential prospectus fraud has led to some outflow of capital from ESG-oriented funds, a clear signal that investors want more than empty commitments and a label, but real diligence and governance.

This suggests that investors need a high information environment in order to have trust in their climate-related investments. Current SEC enforcement actions show the importance of disclosure for investors; fund and fund managers have been shown to be investing in ways

that don’t meet the ultimate capital owner’s desires. Therefore, these disclosures are paramount for investors to have a sufficiently clear picture of how their funds are being spent, and to reinforce trust between investors and registrants.

Additionally, these disclosures have the potential to provide clarity to registrants on the concepts of mitigation and adaptation. Registrants will have to adapt in order to reduce the climate-related risks to their operations, and they will have to work to mitigate the impact that their operations have on the climate. There is nuance around these two concepts, and both need to be accounted for when discussing climate risks and transition plans.

Via mitigation, registrants can work to reduce their contribution to climate change and their impact on the climate by various means, including reducing and preventing emissions, investing in flexible supply chains, and preparing for regulatory changes. These risks will manifest in different ways depending on a variety of specific factors for each registrant. For instance, some registrants are located in areas that do not face a great deal of physical climate-related risks. Instead, they might primarily face climate-related regulation changes and supply chain complexities.

Furthermore, some registrants might be in a position where increasing their own emissions enables further emissions reductions down the line in order to meet broader mitigation goals. For example, a mining company that extracts lithium for electric car batteries will have its emissions increase dramatically as gas and diesel cars are phased out in favor of electric vehicles (EVs) and the demand for lithium increases. The increase in EVs will ultimately lead to less net emissions globally, enabled by the increased emissions associated with lithium production. The transition to EVs is a core pillar of the US mitigation plan to reduce domestic emissions, and it is important for these lithium mining companies to be able to discuss that while their emissions may increase, their actions enable a greater emissions reduction target to be met.

However, companies that must increase their emissions to enable larger scale emissions reductions, such as lithium mining companies, should not be allowed to include the emissions reductions they enable in their aggregate emissions, as that would be double counting. Therefore, when it comes to mitigation, it is important to take into consideration the nuances of each registrant's business model, and to recognize that registrants might need to mitigate against the impact they have on the environment, mitigate against the regulatory and supply chain risks they face, and adapt accordingly.

Adaptation describes the processes by which registrants adjust to the existing and future impacts of climate change. For example, a company can be operating at net zero, but still be subject to the physical climate-related risks that occur in their location. The fact that registrants need to adapt to the physical risks associated with their geographic location is not related to how they operate their business; instead it is a part of adapting to risks posed by

the changing climate. These proposed disclosures provide sufficient opportunity for registrants to share their adaptation and mitigation plans, thereby providing investors with important information to assess and compare responses to the changing climate.

Transition plans are composed of the specific steps a company intends to take in order to adapt to or mitigate their various risks. They are also the part that involves the most uncertainty, speculation, and change. It is straightforward for companies to understand where they are today, where their climate-related risks are, and what their desired end state is. The uncertainty lies in building a specific quarter by quarter, year by year transition plan that will achieve the desired end state.

Many registrants will face the need to transform their business operations in order to face the realities of climate change. This can mean businesses must pivot in new directions that will require them to adapt and adopt a set of knowledge outside of their core expertise. These changes are often imposed by an external impetus, including climate change, regulations, changing consumer sentiments, or supply chain changes, and they often must occur within a constrained time frame.

The uncertainty created by all of these factors exposes the limits of data-driven decision making. Most businesses are used to data-first decision making processes being the standard. However, the problem when dealing with climate-related risks is that most of the data that companies have is retrospective and therefore less helpful when you are facing a future that is fundamentally different from your past. Creating a transition plan forces companies to build plans that have elements that land outside of their core competencies and where existing data is limited, to face higher uncertainty where they feel they need more data to reach conclusions, to factor in time sensitivity where data collection has high opportunity costs, and to acknowledge high stakes where reluctance to commit to a plan amplifies the challenge and interia.

Due to these factors, it is our position that the best way to require disclosure regarding transition plans is to focus on making progress, and not force the disclosure of data that may not exist yet. Registrants should be encouraged to make plans based on the data available at the time of disclosure, and to be able to update and amend when necessary. In our response below, we will recommend more specific guidance regarding transition plan disclosures, guided by the need for flexibility and to encourage the creation and implementation of these plans.

Finally, we believe that these proposed disclosures will not mark a notable increase in reporting burdens. Any company that is making a good faith effort to understand their emissions profile, create mitigation, adaptation, and transition plans, and that intends to follow through on those pledges will find complying with these new requirements to be a minimal effort when compared to the actual hard work of preparing their business for climate change.

In order for investors to understand how registrants are preparing for and responding to the climate crisis, they need clear, comprehensive, and accurate disclosures that quantify the risks and potential returns. Actual supports the mandatory framework proposed here, as it is key for investors to make informed decisions, and to help maintain the competitiveness of American corporations as new climate-conscious markets emerge around the world.

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8. Should we specify a particular time period, or minimum or maximum range of years, for “short,” “medium,” and “long term?”

Specific time periods should not be determined by the SEC for the classifications of ‘short’, ‘medium’, and ‘long’ term. Given that these terms are industry specific, each registrant should be able to define these terms as appropriate for their situation. For instance, a software company might designate a project to transition all of its data centers to renewable energy with a 5 year timeline as ‘long-term’. On the other hand, a company with a larger physical footprint, such as a manufacturing company pivoting to renewable energy at numerous plants, might consider 5 years to be short-term.

Asking the SEC to determine universal definitions of ‘short’, ‘medium’, and ‘long’ term would therefore not provide investors the best insight into the operations of a registered organization. Allowing registrants to define their own timelines based on their business needs and industry norms is a better way for investors to track and compare risk among peer companies with similar challenges, products, and profiles.

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12. For the location of its business operations, properties or processes subject to an identified material physical risk, should we require a registrant to provide the ZIP code of the location or, if located in a jurisdiction that does not use ZIP codes, a similar subnational postal zone or geographic location, as proposed?

Registrants should be required to share the location of their business operations, properties or processes subject to an identified material physical risk. The location of these assets is essential information for an investor to have, especially for companies with fixed assets in geographic regions that are expected to experience increased physical risk associated with climate change. Such climate-related events pose risks to companies, investors, and financial markets, and can be experienced by any organization. Without providing the location of physical assets and infrastructure, investors are hobbled in their ability to adequately assess and compare risks associated with a registrant’s assets.

Additionally, location information should be required from registrants with transition or climate-risk mitigation projects in the real world. For these types of endeavors, the location of these activities matters greatly given that solutions must be locally relevant and specific.

However, the location details shouldn't be as coarse as a ZIP code. ZIP codes can be insufficient: for example, a farm might be larger than a single zip code, or a business might have assets in a proprietary location. Investors would benefit from the most granular information a registrant is able to provide, and at the very least should have enough information to do their own due diligence. In addition, many businesses have international footprints, outside the scope of the US ZIP code system but well within the risk assessment needs of investors.

Given these conditions, our recommendation is that the SEC require companies to share the locations of physical infrastructure whose loss or damage would have a material impact on a registrant's finances. For example, if a company has a production facility that is in a coastal area expected to experience sea level rise, the address of that should be shared. Similarly, if a registrant has a research facility that spans several zip codes within an area known to experience increasing wildfires, those county designations should be provided. High resolution geolocation data shouldn't be required but encouraged so that investors have as much detail as possible to make their risk assessment. Furthermore, registrants will be motivated by market or contractual pressures to disclose relevant location details over time.

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13. If a registrant determines that the flooding of its buildings, plants, or properties is a material risk, should we require it to disclose the percentage of those assets that are in flood hazard areas in addition to their location, as proposed? Would such disclosure help investors evaluate the registrant's exposure to physical risks related to floods? Should we require this disclosure from all registrants, including those that do not currently consider exposure to flooding to be a material physical risk? … Should we require disclosure of whether a registrant's assets are located in zones that are subject to other physical risks, such as in locations subject to wildfire risk?

If a registrant determines that the flooding of its buildings, plants, or properties is a material risk, they should be required to disclose that they have physical infrastructure at risk. However, it is important to keep in mind that just because a building is in a location that is at high risk for flooding, that alone does not determine a facility's risk for flooding-related damage. All registrants should be required to disclose the extent to which they have hardened their physical infrastructure against flooding, and other climate-related physical risks, as part of their mitigation strategy. The mitigation work done to protect infrastructure is as important as geography in understanding the risk posed by climate-related physical risks and climate disasters.

Furthermore, registrants should not be required to disclose the percentage of assets that are designated to be in a flood hazard area, wildfire zone, or any other area that is

subject to climate-related physical risks. Instead, the standard of materiality for the registrant should matter more. For example, consider a consumer electronics company that has several warehouses located in a flood hazard area that comprise a significant percentage of their physical infrastructure, and those warehouses are full of cardboard boxes and other packaging materials. The same company has a smaller building in a wildfire zone, but that building houses a $20 million machine. This company also has a small warehouse in downtown Los Angeles, and a large one in a rural area.

In this instance, the percentage of physical infrastructure that is at risk of climate-related physical events doesn't provide particularly helpful information to investors regarding risk profiles. Instead, what matters most is what is in the path of climate-related physical risks, and where the land is. A building with expensive equipment is much more valuable, and therefore a greater financial risk, than one that houses packing material. Similarly, a smaller warehouse in a city downtown is more efficient per square foot when compared to a larger one in a more rural area. Therefore, registrants should be required to disclose this concentration of risk instead of just the percentage of assets impacted by a physical risk.

Registrants should further be required to define 'assets' (i.e. are the assets physical infrastructure, manufacturing equipment, packing materials, a data center, etc), and to disclose the aggregated financial impact of climate-related disasters for all of the registrant's physical infrastructure. This should be required of all registrants, not just those who have self-determined to have infrastructure in areas of physical risk.

The SEC should recommend that registrants use an industry standard to map physical climate-related risks, but also permit registrants to use any map of physical risks (i.e. flood map, wildfire risk map, etc) that they choose. In this instance, registrants should be required to disclose why those chose a certain map / information source, how they did their calculations, what data sets were used, and how they got to their answer.

In order to adequately account for physical risk, investors must know where the registrant's fixed assets are. Even if they are not in an active floodplain, for example, they could still be in a region that experiences other types of physical risks that are being exacerbated by climate-related changing weather patterns. Disclosing this information will help investors better evaluate the magnitude of a registrant's exposure to various types of physical risk, and therefore be better able to measure and compare risk.

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18. Is there a risk that the disclosure of climate- related opportunities could be misleading and lead to "greenwashing"?

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Greenwashing is already a wide-spread problem, and climate-related opportunities are already being marketed and disclosed in misleading ways. The disclosure requirements within this proposal are among the best ways to minimize the risk of greenwashing by requiring registrants to publish their climate-related opportunities plans. This can be done by registrants showing the specific steps taken and tracking progress towards goals aligned with climate-related opportunities. Without disclosing the plans designed to achieve these goals, any organization could claim to have access to an opportunity and potentially mislead investors into thinking that these opportunities will be realized. This requirement will stop companies from projecting a scenario that they have no intention of meeting, and will require them to back up their statements with real action and results.

Furthermore, current SEC enforcement action of ESG funds shows that investors have been quite explicit in what they are looking for. The influx of investment into ESG funds shows that highlighting climate-related opportunities can be a very effective way to raise capital. Equally, the outflow shows that investors want real action; for example, when claims regarding climate-related action are not met, investors remove their investment. The disclosures proposed here are the most effective way to create trust between registrants and investors by proving that registrants are following through on their claims.

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19. Should we require a registrant to disclose impacts from climate-related risks on, or any resulting significant changes made to, its business operations, including the types and locations of its operations, as proposed?

Registrants should be required to disclose impacts from climate-related risks on, and any resulting significant changes made to, its business operations, including the types and locations of its operations. The risks a registrant faces to its business operations and locations due to climate-related risk is directly material to the facilitation and maintenance of capital formation, and any changes made to accommodate or mitigate climate-related risks demonstrate to investors how the registrant is responding to risk. Registrants should be required to avoid boilerplate discussions of climate-related risks, and be required to instead provide an analysis of the impacts of climate-related risks to their business.

Per the proposal, registrants should be required to disclose impacts on their business operations, products or services, suppliers and other value chain parties, activities associated with mitigating or adapting to climate-related risks, and any other significant changes or impacts.

This would allow for investors to have a more holistic understanding of the climate-related risks and impacts facing the registrant. Requiring all registrants to follow this disclosure would also provide investors with more consistent, comparable, and reliable information across organizations.

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22. Should we require a registrant to provide both current and forward-looking disclosures to facilitate an understanding of whether the implications of the identified climate- related risks have been integrated into the registrant's business model or strategy, as proposed?

Registrants should be required to provide both current and forward-looking disclosures to facilitate an understanding of whether the implications of the identified climate-related risks have been integrated into the registrant's business model or strategy. Providing current disclosures is essential for establishing a baseline. Forward-looking disclosures are key for investors to be able to understand how the registrant is assessing their climate-related risks, and how they are planning to adapt their business model and strategy accordingly. This allows investors to better compare between organizations, and determine what aligns with their risk profile.

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23. Should we require the disclosures to include how the registrant is using resources to mitigate climate-related risks, as proposed?

Registrants should be required to disclose how they are using resources to mitigate climate-related risks. The internal allocation of funds signals to investors the extent to which the registrant has prioritized mitigation. Investors can only adequately assess the registrant's plans if they have sufficient visibility into the risks that the registrant is mitigating and the resources allocated to mitigate them.

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24. If a registrant has used carbon offsets or RECs, should we require the registrant to disclose the role that the offsets or RECs play in its overall strategy to reduce its net carbon emissions, as proposed?

If a registrant has used carbon offsets or RECs, they should be required to disclose the role that the offsets or RECs play in their overall strategy to reduce their net carbon emissions. This information is crucial for determining the strategic approach towards climate-related risk a registrant is taking. Organizations that rely heavily on offsets /

RECs versus those that are transitioning to lower emissions and plan to use offsets to make up the difference signal different potential risk profiles to investors.

Furthermore, registrants should be required to disclose whether the RECs were bundled or unbundled, and should further be required to exclude any use of purchased offsets when disclosing Scope 1, Scope 2, and Scope 3 emissions. Having visibility into the real emissions associated with each is important, given that including offsets in the equation provides a cloudy picture and would make comparison more difficult for investors.

24. Are there specific considerations about the use of carbon offsets or RECs that we should require to be disclosed in a registrant's discussion regarding how climate- related factors have impacted its strategy, business model, and outlook?

Registrants should be required to disclose the reasoning behind their decision to use carbon offsets or RECs. For example: are they using them to offset certain types of emissions? How did they reach the target amount of offsets? Do they have a plan to decrease offset use and transition to a lower carbon model, or is it an embedded part of their sustainability plan?

Additionally, if a registrant has used offsets or RECs, they should be required to disclose:

- Whether the RECs are bundled or unbundled;
- The amount of carbon reduction that is represented by the offsets;
- The amount of generated renewable energy that is represented by the RECs;
- The source of the offsets or RECs, the type and source of the underlying project (i.e. naturally occurring via planting trees or the result of carbon capture and storage);
- The location of the underlying projects;
- Any registries or other authentication of the offsets or RECs;
- The costs of the offsets or RECs.

This information is key in helping investors understand the extent to which a registrant is relying on offsets / RECs to account for progress towards their goals and the costs associated with that in the long run. It is also essential for investors to have visibility into the success of offsets (i.e. did any burn in a wildfire? What is the expected lifetime or permanence of an offset? etc). Registrants should also be required to disclose their plan for keeping track of their offsets and plans for replacing failed offsets, as well as the estimated costs associated with replacement.

ACTUAL

30. Should we require a registrant to disclose analytical tools, such as scenario analysis, that it uses to assess the impact of climate-related risks on its business and consolidated financial statements, and to support the resilience of its strategy and business model, as proposed? What other analytical tools do registrants use for these purposes, and should we require disclosure of these other tools?

Registrants should be required to disclose analytical tools, such as scenario analysis, that they use to assess the impact of climate-related risks on their business and consolidated financial statements, and to support the resilience of its strategy and business model. The tools that a registrant uses ultimately determine the kind of analysis that can be conducted, the format of the analysis, and the limitations and validity of the results. Therefore, registrants should be required to share how they analyzed the results stemming from an analytical tool, alongside any outcomes and implications of the analysis, and not just state that they conducted the analysis.

We believe that investors will be most interested in the financial impact of various scenarios relating to climate change over the short-, medium-, and long-term. Specifically, how under different future climate scenarios, climate-related risks might impact a registrant's operations, business strategy, and consolidated financial statements over time, as well as how resilient their strategies are under future climate scenarios. This helps companies to develop a better informed view of the implications of their decisions made today for the core business as well as their value chains. This type of disclosure is necessary in order to inform investors about the reliability and resiliency of the company's plans to address climate-related risks and opportunities over time.

30. If a registrant does provide scenario analysis disclosure, should we require it to follow certain publicly available scenario models, such as those published by the IPCC, the IEA, or NGFS and, if so, which scenarios? Should we require a registrant providing scenario analysis disclosure to include the scenarios considered (e.g., an increase of global temperature of no greater than 3 o, 2 o, or 1.5 oC above pre-industrial levels), the parameters, assumptions, and analytical choices, and the projected principal financial impacts on the registrant's business strategy under each scenario, as proposed?

If a registrant does provide scenario analysis, they should be encouraged to follow a publicly available scenario model. However, registrants should also be provided the latitude to come up with their own scenario models. If a registrant chooses to create their own model, they should be required to disclose the process by which they created that model, the assumptions made when making the model, and any outputs that result from it.

For registrants who choose to use an existing publicly available scenario model, the SEC should recommend several frameworks that registrant's can choose from, including those produced by the IPCC, IEA, and NGFS. It should remain the registrant's choice which framework they use from the pre-approved list. This will allow for better comparability and consistency across disclosures.

However, there are limitations with the publicly available models mentioned above. For example, if a company runs a scenario recommended by one of the models that says their geographic region will experience 10 feet of sea level rise by a certain year, they could simply disclose that they face this risk. This disclosure doesn't capture why focusing on 10 feet sea level rise is impactful for a registrant's business operations, or what mitigations or adaptation strategies they might pursue. It would be more helpful for a registrant to be required to disclose:

- What different scenarios were considered in order to determine their mitigation and adaptation plan;
- How they modeled different plans to look at resilience;
- How they picked the best option to minimize their risks in a given scenario.

Additionally, there is currently no standard framework for reporting against these metrics, and we encourage the SEC to develop best practices for doing so. Registrants should be encouraged to provide this information in both narrative and quantitative forms alongside disclosures of the parameters, assumptions, and analytical choices made, as well as the projected principal financial impacts on the registrant's business strategy under each scenario. By providing various scenarios, including variations spanning from continuing on unchanged to a disorderly transition, registrants will enhance the reliability and usefulness of the scenario analysis for investors.

30. Should we also require a registrant that does not use scenario analysis to disclose that it has not used this analytical tool? Should we also require a registrant to disclose its reasons for not using scenario analysis?

Registrants that have chosen not to use scenario analysis should disclose that they have not done so. This may signal to investors which companies are actively planning for a future in which climate change impacts business operations, and which are not. However, it is also important to note that not all companies have risks that will show up in a scenario model given their current limitations, and it may be difficult to prove that without partaking in a modeling exercise. Still, all registrants being required to disclose whether or not they used scenario analysis, or a comparable tool, provides investors an opportunity to better compare among peer companies.

ACTUAL

31. Would the PSLRA forward-looking statement safe harbors provide adequate protection for the proposed scenario analysis disclosure?

PSLRA forward-looking statement safe harbors do provide protection for the proposed scenario analysis disclosure. Safe harbors are a key protection for registrants when disclosing forward-looking plans and information, as they are bound to change over time. This protection will incentivize registrants to be as transparent as possible, while still giving investors valuable insight into climate-related analysis within companies.

However, these safe harbors should be adapted to take into consideration the uncertainty associated with forward-looking climate disclosures. For example, some of the technologies that will help some registrants mitigate the effects of climate-related risks don't yet exist, which makes it difficult to provide an accurate cost estimate. In cases like this, we recommend that registrants be allowed to provide a range of expected costs based on the currently available knowledge instead of a single estimate. Registrants should further be allowed to disclose where there is uncertainty, as well as some of the key drivers of uncertainty, including technological readiness, cost trends, complex supply chains, or impending but unfinalized regional regulations.

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34. Should we require a registrant to describe, as applicable, the board's oversight of climate- related risks, as proposed?

Registrants should be required to describe, as applicable, the board's oversight of climate-related risks. The disclosure of this information allows registrants to provide investors with a comprehensive understanding of board oversight and management governance of climate-related risks. This is key in helping investors evaluate whether a registrant is sufficiently addressing any material climate-related risks, and how those risks potentially affect the value of any investment made.

Boards have a fiduciary responsibility to oversee and mitigate risk, and this includes risks which are climate-related. If passed, these proposed disclosures would provide further insight into companies' climate-related risk and scenario planning, providing key information to investors looking to make well-informed decisions. It signals to the market how a registrant is approaching climate-related risks, and allows investors to better compare different risk management strategies. This requirement will also make climate governance a top priority for registrants, and will encourage them to incorporate climate risk management into plans and performance metrics for the future.

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37. Should we require a registrant to disclose whether and how the board sets climate-related targets or goals, as proposed? Should the required disclosure include how the board oversees progress against those targets or goals, including whether it establishes any interim targets or goals, as proposed?

Registrants should be required to disclose whether and how the board sets climate-related targets and goals. Boards have a responsibility to both oversee and mitigate forward-looking risks, and climate-related targets and goals are core to mitigation and adaptation strategies. Registrants should also be required to disclose how the board oversees progress against set targets and goals, including any interim goals, focused on mitigating or adapting to any material transition risks.

Tracking progress made against targets and goals allows boards to make sure that they are adequately managing the climate-related risks they face. The disclosure of this information is key to protect investors from unnecessary or unaligned risk profiles, and to provide insight into how a registrant's board considers climate-related risks related to business strategy.

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39. Should we require a registrant to describe the processes by which the management positions or committees responsible for climate-related risks are informed about and monitor climate-related risks, as proposed?

Registrants should be required to describe the process by which management and / or committees responsible for climate-related risks are informed about and monitor climate-related risks. Registrants should further be required to disclose the ways in which they are considering how to adapt and/or mitigate risks associated with impacts the registrant has on the climate. Disclosure around how management or committees responsible for climate-related risks interact with the board should also be required.

Having insight into how the registrant determines responsibility and oversight of climate-related risks is key information for investors in order to understand the processes by which the registrant learns of and tracks existing and future climate-related risks. The tracking against targets and goals allows those in management positions or on committees to make sure that they are adequately managing climate-related risks they are facing.

This requirement would help investors to assess if the registrant has centralized the processes for managing climate-related risks, which can indicate how the board and / or management will respond to unfolding risks and how the organization will adjust

their plans in an environment of changing risks. The disclosure of this information is key to ensuring that investors are able to make well-informed decisions regarding how the registrant is making climate-related decisions, and the impact those decisions might have on shareholder value.

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42. Should we require a registrant to describe its processes for identifying, assessing, and managing climate-related risks, as proposed?

Yes, registrants should be required to describe their process for identifying, assessing, and managing climate-related risks. The SEC has a long-standing history of requiring risk disclosures, and including these decision-useful disclosures regarding climate-related risk would be consistent with best practices. The more specific the information regarding climate-related risks, and the processes the registrant follows to identify, assess, and manage those risks, the better investors can understand the ways in which those risks materially impact the registrant's business, and how climate-related risk management has been integrated into regular risk management processes.

Registrants should be required to disclose, as relevant:

- How they determine the relative significance of climate-related risks compared to other risks;
- How they consider existing or likely regulatory requirements or policies, such as emissions limits, when identifying climate-related risks;
- How they consider shifts in customer or counterparty preferences, technological changes, or market price changes;
- How they determine the materiality of climate-related risks, including how they assess the potential size and scope of an identified climate-related risk.

Specifically, it is key for registrants to disclose how they considered these shifts in assessing potential transition risks. These specific requirements provide color and visibility to investors into how the registrant views their risks and is taking steps to manage them.

They should be further required to disclose:

- How they decide whether to mitigate, accept, or adapt to a certain risk;
- How they prioritize climate-related risks;
- How they determine mitigation strategies for a high priority risk.

This prioritized information provides essential insight for investors to make informed decisions.

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46. If a registrant has adopted a transition plan, should we require the registrant to describe the plan, including the relevant metrics and targets used to identify and manage physical and transition risks, as proposed?

If a registrant has adopted a transition plan, they should be required to describe the plan, including the relevant metrics and targets used to identify and manage physical and transition risks. Instead of requiring specific metrics or focusing on individual metrics, processes, and paperwork, we recommend focusing on the actions registrants are planning to take and the measurable impact those actions will have in the physical world.

Registrants that do not have a publicly stated transition plan should be required to explain why they have chosen not to implement such a plan. Additionally, the SEC should require registrants with transition plans to share common high level details about those plans. For example, registrants should be required to share their:

- Contemporary or chosen baseline;
- Transition-related pledges;
- Transition-related goals;
- What risks they want to mitigate and how they identified those risks;
- Any climate-related opportunities that their transition plans surface;
- How much they are willing to invest;
- A roadmap outlining the short-, medium-, and long-term outcomes;
- The amount they are planning to invest in a transition plan;
- The timeline over which they are planning to invest in a transition plan.

With this sort of disclosure, an investor will be able to compare various companies' baselines, plans, resources allocated, timelines, and expected outcomes in order to make an investment decision. Furthermore, this information will help investors understand how a registrant is intending to address climate-related risks, while transitioning to a lower carbon model and managing business expectation and financial specifics.

46. Would this proposed disclosure requirement raise any competitive harm concerns and, if so, how can we mitigate such concerns?

Whether or not the proposed disclosure raises any competitive harm concerns depends upon the amount and kind of information registrants are required to disclose. A transition plan is a registrant's strategy and implementation plan to reduce climate-related risks. Transition plans can contain information ranging from how a company is planning to use more renewable energy to how they are planning to launch a more sustainable product. Given the variety of outcomes that stem from transition

plans, the disclosure requirement should be flexible. Under the current proposal, the only required reporting is focused on the current state of affairs, and disclosure of the plans is voluntary. Registrants are able to self-determine which transition risks and opportunities are relevant for disclosure.

However, the disclosure of transition plans could raise competitive harm concerns depending on the nature and scale of the transition plan. For instance, if an oil and gas company that is planning to become a renewables company is required to disclose details of that transition plan, that could put them at a significant competitive disadvantage. Therefore, the risk surfaces when the plan has to be disclosed in great detail. We argue that the important information lies not in the specific of the plan, and that enough information is provided that investors can determine whether a registrant has a credible plan with sufficient resources dedicated to it.

Additionally, many transition-related changes a company might make will be caused by regulatory changes, such as pivoting to lower-water usage. Publishing plans that align with regulatory requirements doesn't create a disadvantage. For most companies publishing a transition plan, they won't be changing their business but instead how they operate.

Ultimately, registrants should be allowed to self-determine how much of their transition plans to disclose, with a minimum requirement focused on a few key parameters: allocated resources, timeline, how progress will be tracked, and summary of the desired end state when this does not represent a competitive disadvantage.

46. Would any of the proposed disclosure requirements for a registrant's transition plan act as a disincentive to the adoption of such a plan by the registrant?

Any disincentive associated with more reporting will be outweighed by both real world considerations and investor/customer preferences. For example, the increase in climate disasters makes it a statistical certainty that all businesses will be impacted by climate-related risks at some point. This removes the disincentive to avoid planning for any kind of transition, whether that transition is pivoting to a lower-carbon business model or hardening physical infrastructure to prepare for increased physical risks.

Additionally, the disclosure of transition plans increases marketability and the confidence investors will have. Registrants who choose to make and disclose transition plans will signal to investors and their customers that they are actively preparing for the future and doing so with climate-related risks and opportunities top of mind. Registrants that choose to not publish transition plans will inadvertently signal to investors that they are not publicly planning to transition to a lower carbon business model, for example, which will allow investors to make a choice regarding their own

risk profile. Furthermore, such disclosure will help investors to evaluate whether a registrant has an effective strategy to achieve its short-, medium-, and long-term climate-related goals.

Transition risk can also arise not just from climate-related risks, but from changes in customer preferences, technological changes, or changes in the market. Given this, if companies find that they have to transition to satisfy any of those changes, they will have to do transition planning regardless; the opportunity to disclose provides a way to increase investor and customer interest and cuts off an avenue for registrants to mislead investors.

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47. If a registrant has adopted a transition plan, should we require it, when describing the plan, to disclose, as applicable, how the registrant plans to mitigate or adapt to any identified physical risks, including but not limited to those concerning energy, land, or water use and management, as proposed?

If a registrant has adopted a transition plan, they should also be required to describe within how they plan to mitigate or adapt to any identified physical risks, including, but not limited to, those concerning energy, land, or water use and management, exposure to sea level rise, extreme weather events, wildfires, drought, and severe heat. It should also be made clear by the registrant if their transition plan is focused on improving their impact on the environment, and / or working to improve their resilience to climate-related events.

For example, a company that has operations in an area that has experienced several active wildfire seasons might plan to relocate those vulnerable operations within their transition plan. A company that is experiencing drought might plan to adapt to a lower water usage business model, or invest in a recycled water system where appropriate. As mentioned in our response to Question 46 above, we recommend that registrants are required to disclose:

- Their baseline at the time they started planning;
- What their goals are and how they selected those goals;
- What risks they are looking to mitigate and how they identified those risks;
- Any climate-related opportunities;
- How much they are willing to invest;
- A roadmap broken down into different timelines that end in their ultimate goal.

Registrants should not be required to describe the specific technical details of their transition plans, but they should disclose their anticipated investment, their roadmap to achieve their goals, and how they will ensure that they are on track to meet their goals.

Disclosing how a registrant is planning to respond to physical risks, within their transition plan, provides key information to investors around how the company is practicing risk assessment, mitigation, and adaptation, and transitioning to operate in a way that better fits our changing environment. These plans therefore help investors to understand how the registrant intends to address identified climate-related and transition risks while managing and assessing operations and financial particulars, therefore allowing investors to better understand the long-term consequences of investing in an organization, and allow for risk profile alignment.

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48. If a registrant has adopted a transition plan, should we require it to disclose, if applicable, how it plans to mitigate or adapt to any identified transition risks, including the following, as proposed:

- **Laws, regulations, or policies that:**
    - **Restrict GHG emissions or products with high GHG footprints, including emissions caps; or**
    - **Require the protection of high conservation value land or natural assets?**
- **Imposition of a carbon price?**
- **Changing demands or preferences of consumers, investors, employees, and business counterparts?**

If a registrant has adopted a transition plan, they should be required to disclose the above recommendations, as applicable. This information will help investors to understand how the registrant intends to address climate-related risks and transition to a lower carbon business model, in line with existing regulations and laws.

We would also recommend that registrants are required to disclose any technological risks they will face, when applicable. If a company chooses not to transition, it will become more difficult over time for them to service, maintain, upgrade, and continue operations that involve legacy technologies. Some materials will become increasingly scarce, costs of maintaining older, unsupported technologies will increase, and not transitioning will become a financial liability that investors should be made aware of.

The availability of future technology and the assumed cost curve also presents a transition risk that registrants should be required to disclose. For example, an aviation company might plan on adopting a green, synthetic aviation fuel, but the expected timeline and cost is based on a number of assumptions. Those assumptions are necessary for compiling a transition plan, but the ways in which they have been taken into consideration should be disclosed for investor visibility. There is also a risk that the company planning to adapt a future technology doesn't know enough about it at

the time of writing to fully understand the assumptions made. For instance, the owner of a self-storage company might not know about the solar panel technology they plan to install to disclose assumptions about time-cost curves. Therefore, we recommend that the proposed disclosures are amended to include a requirement, when reasonable, for registrants to disclose the assumptions around the technology they are planning to adopt within their transition plans.

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49. If a registrant has adopted a transition plan, when describing the plan, should we permit the registrant also to discuss how it plans to achieve any identified climate-related opportunities, including, as proposed:

- **The production of products that facilitate the transition to a lower carbon economy, such as low emission modes of transportation and supporting infrastructure?**
- **The generation or use of renewable power?**
- **The production or use of low waste, recycled, or environmentally friendly consumer products that require less carbon intensive production methods?**
- **The setting of conservation goals and targets that would help reduce GHG emissions?**
- **The provision of services related to any transition to a lower carbon economy?**

If a registrant has adopted a transition plan, when describing the plan they should be permitted to discuss how they plan to achieve any climate-related opportunities, including the proposed examples above. If a registrant is seen to be pursuing new opportunities that surface while the company is transitioning to a lower carbon business model, for example by producing lower waste consumer products, this signals to investors that they are being proactive about transitioning to a lower carbon business model, making progress on their transition plan, and pivoting in line with consumer preferences, resulting in new revenue streams.

49. Should we require a registrant to discuss how it plans to achieve any of the above, or any other, climate-related opportunities when describing its transition plan?

If a registrant discusses how it plans to achieve any climate-related opportunities, they should be required to disclose that within the transition plan. Without disclosing plans to achieve their climate-related opportunities goals, any organization could claim to have access to an opportunity and potentially mislead investors.

However, since climate positive investments and climate-related opportunities can have a positive impact on the bottom line, registrants should be provided some flexibility. Registrants should not be required to specifically disclose proprietary details, but instead should be required to disclose the investments they are making

over time in order to meet their disclosed goal, as well as how they will be tracking progress. This provides investors sufficient insight into the climate-related opportunities registrants are pursuing, without creating competitive harm concerns.

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94. Should we require a registrant to disclose its GHG emissions both in the aggregate, per scope, and on a disaggregated basis for each type of greenhouse gas that is included in the Commission's proposed definition of 'greenhouse gasses', as proposed?

Registrants should be required to disclose their GHG emissions both in the aggregate, per scope, and on a disaggregated basis for each type of greenhouse gas that is included in the proposed definition of 'greenhouse gasses'. By requiring both the aggregated and disaggregated information, investors will be able to gain decision-useful information relating to the risks associated with a registrant's GHG profile. For example, if the government mandates a specific target for a given greenhouse gas, knowing where a registrant stands within that target range provides useful insight as to the impact on the business, and how much reduction needs to be done / has been done.

It is important to note that understanding the accounting of emissions is very different from understanding how those emissions are going to be reduced. Furthermore, the amount of emissions is not necessarily correlated with the difficulty of reducing those emissions. This depends on a variety of factors, including what technology is available and what scope the emissions fall within.

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100. Should Scope 3 emissions disclosure be voluntary?

Scope 3 emissions, like Scope 1 and 2 emissions, should be a required part of the disclosure. For example, a consumer looking to buy a carbon neutral sweater doesn't care where within the value chain those emissions came from, and would likely feel misled – and change their purchasing decisions – if it became clear that the sweater was only considered zero-carbon because core sources of emissions were excluded. Similarly, investors looking to understand the scope of a registrant's emissions will have an incomplete picture if Scope 3 emissions are excluded. Without requiring that Scope 3 emissions be disclosed, registrants could sell their most polluting assets that fall within Scopes 1 and 2 to a third party, and then continue to use those polluting assets now classified as Scope 3. This doesn't change the total emissions associated with the registrant, but it drastically changes the reporting picture if Scope 3 emissions are required to be disclosed.

We recognize that there is complexity in measuring Scope 3 emissions, and that there are not yet established methodologies for measuring Scope 3 emissions to the same extent that there are available methodologies for measuring Scope 1 and 2 emissions. However, we would argue that getting precise measurements is not the point, nor is the paper trail accounting for emissions.

Additionally, as mentioned in our introduction regarding the lithium mining example, companies whose own increased emissions enable greater aggregate emissions reductions should not be allowed to count those reductions in order to reduce their Scope 3 emissions. The reduced emissions associated with an EV belong to the end user, charging provider, or other entity, not the mining company that produced the lithium. To allow the mining company to count them would amount to double counting.

However, companies whose own increased emissions allow for the reduction of emissions more broadly, such as lithium mining companies, should be allowed to discuss the net downstream impact of the emissions enabled by their output. This is key in providing sufficient context to investors regarding their ultimate environmental impact by enabling the mitigation of climate risk on a broader scale.

We argue that it is better for registrants to focus on using available tools to estimate their Scope 3 emissions, and that they be required to do so. Under the protection of a safe harbor, registrants should be required to disclose the methods and tools they used to measure their Scope 3 emissions, and to account for them throughout their value chain. It is only by including Scope 3 emissions in the required disclosure that investors will have an accurate understanding of the emissions profile of registrants, and be able to make the most informed decisions about climate-related risks, and the completeness of any transition plans.

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168. Should we require a registrant to disclose whether it has set any targets related to the reduction of GHG emissions, as proposed? Should we require a registrant to disclose whether it has set any other climate-related target or goal, e.g. regarding energy usage, water usage, conservation or ecosystem restoration, or revenues from low-carbon products, in line with anticipated regulatory requirements, market constraints, or other goals, as proposed?

If a registrant has set any targets related to the reduction of GHG emissions, they should be required to disclose those targets. Relatedly, a registrant should be required to disclose any other climate-related targets and goals, including those regarding energy usage, water usage, conservation or ecosystem restoration, or revenues from

low-carbon products in line with anticipated regulatory requirements, market constraints, or other goals established by a climate-related treaty, law, regulatory, policy, or organization.

Alongside disclosing any climate-related targets and goals, registrants should be required to provide detailed information about each of their climate-related targets and goals, including action plans and timelines for achieving such targets, and include performance data measured against those targets.

Without providing detailed information about how companies plan to meet their targets and goals, investors won't have sufficient information to understand how companies intend to make and track progress, resulting in a form of greenwashing. Thorough accounting of targets, goals, and the plans to meet them allow investors to better evaluate registrants.

Furthermore, it is important to acknowledge that there is a source of error in all emissions measurement practices and standards. For example, when booking a flight, many online ticket providers have begun to share the emissions associated with that specific flight. However, the true emissions are impacted by a variety of factors that can't be properly accounted for in real time or at scale, including the weight of luggage, delays, weather, etc.

For companies that have a target to reduce emissions, it is more important that they are taking actions to reduce emissions than it is for them to have a perfect accounting of contemporary emissions. It is better for companies to make their best estimates, and then fully disclose where the errors might be and why. This allows registrants to identify the core of the issue: that precise measurements are less important than developing an understanding of where the biggest needs and opportunities to reduce emissions are, and actively working to reduce those emissions.

Measurement is important to the extent that it identifies the sources of emissions and can be used to prioritize action areas and track progress, but what really matters is actually reducing and eliminating emissions, not simply measuring emissions with increasing precision year after year. Providing this level of transparency, including permission to admit where data might be missing, provides a much more accurate picture to investors of where the emissions-related risks are and what is being done about them.

168. Would our proposal discourage registrants from setting such targets or goals?

This proposal will not discourage registrants from setting targets and goals if they have done the background work to identify those goals and understand how to meet

them. Reporting requirements should remain light enough that they are consistent with information needed to build any plan to meet targets and goals. The disclosure requirement should be tailored to registrants that have made a good faith effort to build a plan, and therefore can satisfy the disclosure requirements readily.

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169. Should we require a registrant, when disclosing its targets or goals, to disclose:

- **The scope of activities and emissions included in the target;**
- **The unit of measurement, including whether the target is absolute or intensity based;**
- **The defined time horizon by which the target is intended to be achieved, and whether the time horizon is consistent with one or more goals established by a climate-related treaty,law, regulation, or organization;**
- **The defined baseline time period and baseline emissions against which progress will be tracked with a consistent base year set for multiple targets;**
- **Any intervening targets set by the registrant; and**
- **How it intends to meet its targets or goals, each as proposed?**

If a registrant has set multiple targets or goals, should it be permitted to establish different base years for those targets or goals?

Registrants should be required to disclose the above recommendations, as applicable. This information detailing how registrants are working towards meeting their targets and goals, including whether the target is absolute or intensity based and whether it is the ultimate goal or an intervening target, will help investors understand a registrant's particular targets and goals, the timeline associated with their targets and goals, how measurement will occur, and how progress will be tracked. Information about how a registrant is seeking to meet its targets or goals will provide investors with a better understanding of the potential costs, opportunities, and risk profile.

To return to our lithium mining example from above, this is an instance in which a registrant might want to report their emissions as an intensity metric. In doing so, the registrant is able to provide more context to the investor, and appropriately help the registrant to communicate to investors the steps they are taking to improve their environmental impact even in the face of increased demand.

Furthermore, targets and goals should be allowed to have different base years. However, we recommend that the SEC exercise caution in allowing registrants to pick a base year that had unusually high emissions. We recommend that the SEC require registrants to choose a base year that is not an outlier, and that is representative of their average annual emissions around that base year. Additionally, the timeline of goals can be determined by external factors, and by other targets and goals

themselves. Requiring that all registrants share the same base base year or timeline is unduly burdensome and not of value to investors.

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170. Should we require a registrant to discuss how it intends to meet its climate-related targets or goals, as proposed?

A registrant should be required to discuss how it intends to meet its climate-related targets and goals. As stated above, this information will provide investors with a more detailed understanding of the potential impact a registrant will face while pursuing its climate-related targets and goals. For example, this could include the costs to mitigate a climate-related risk, such as a company working to reduce GHG emissions via implementing a high cost solution like investing in renewable infrastructure.

Space should be given for companies that have recently set targets and goals, and for companies to set ambitious goals. For example, a company might make a target or goal without first knowing exactly how they will achieve those goals, perhaps because the technology they are planning to use is still in active research and development. Their strategy will become clear and will be refined over time, such as when new technologies, services, partners, or other key elements necessary to deliver on the plan become available. In cases where the plan is developing, registrants should be required to share what they do have, as well as state that they are working to develop their strategy over time. This provides investors with sufficient information regarding a registrant's development and implementation of a plan, and the risks that exist in the plan execution itself.

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171. Should we require a registrant, when disclosing its targets or goals, to disclose any data that indicates whether the registrant is making progress towards meeting the target and how such progress has been achieved, as proposed?

Registrants should be required, when disclosing its targets or goals, to disclose any data that indicates whether the registrant is making progress towards meeting the target and how such progress has been achieved. Progress updates provide clarity as to whether an organization is progressing against their goals or is stalled. Demonstrating progress against targets and goals can signal to investors that a registrant is taking their commitments seriously and actively working to reduce their climate-related risks. Furthermore, if registrants are not required to share detailed plans and progress updates, they could inadvertently mislead investors.

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173. If a registrant has used carbon offsets or RECs, should we require the registrant to disclose the amount of carbon reduction represented by the offsets or the amount of generated renewable energy represented by the RECS, the source of the offsets or RECs, the nature and location of the underlying projects, any registries or other authentication of the offsets or RECs, and the cost of the offsets or RECs, as proposed? Are there other items of information about carbon offsets or RECs that we should specifically require to be disclosed when a registrant describes its targets or goals and the related use of offsets or RECs?

If a registrant has used carbon offsets or RECs, they should be required to disclose the amount of carbon reduction represented by the offsets and / or the amount of generated renewable energy presented by the RECs, the source of the offsets or RECs, the nature and location of the underlying projects, any registries, and any other relevant authentication of the offsets or RECs, as well as the costs of the offsets or RECs.

All of the information regarding offsets and RECs is important to disclose so that investors can understand the extent to which a registrant is relying on offsets and RECs both to contribute to progress towards their goals, and to understand the costs and risks of offsets and RECs to the registrant in the long run. It can also help investors to better assess the effectiveness of offsets or RECs and the role they play in a registrant's plan to achieve its climate-related targets and goals.

It is important for the registrant to disclose sufficient information for an investor to be able to determine if the use of carbon offsets was the primary way considered to reduce the emissions associated with each specific source, or if offsets were the final option. If they were the primary way to reduce an emission, that means that the registrant didn't attempt to reduce or remove those emissions via, for example, increasing their use of renewable energy instead, and chose to reduce their aggregate emissions by using offsets. If the use of an offset was the final option, that means that the registrant had no other way to reduce or remove those emissions other than by offsetting them. The key difference here hits at whether or not the registrant is actively seeking permanent means of reducing and gross emissions, or is instead focused purely on net emissions to meet their emissions targets.

Furthermore, registrants should be required to provide information regarding the permanence of an offset. For example, did the offset burn in a wildfire? What is the plan to track the success of an offset? What is the expected lifetime of the offset? What is the plan to replace a failed offset?

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174. Should we apply the PSLRA statutory safe harbors as they currently exist to forward-looking statements involving climate-related targets and goals, or other climate-related forward- looking information?

> The PSLRA statutory safe harbors should apply to forward-looking statements involving climate-related targets and goals, and other climate-related forward-looking information. Given the speculative nature of anything forward-looking, registrants should have these statements protected, assuming all other statutory requirements for those safe harbors are satisfied.