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17 June 2022

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

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

Dear Ms. Countryman:

I am owner and principal of Delahaye Advisers, LLC,¹ and I appreciate the opportunity to respond to the U.S. Securities and Exchange Commission (the "SEC" or the "Commission") rule proposal, *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (the "Proposal").² I am an independent investor, research analyst, and communicator. Through Delahaye, I work with small and large entities, advising on matters related to financial regulation, financial structure, research, and communications. The comments expressed herein are my own and are based upon nearly 40 years as an analyst and participant in the financial services sector.

In the pages that follow, I do not address the appropriateness of specific Regulation S-K or S-X revisions or additions. Others whose expertise in such matters will give the Commission a detailed response to those matters. Rather, my comments provide a high-level consideration of the primary issue of whether these disclosures would enhance investor outcomes, the appropriateness of mandating such disclosures on registered firms, and consideration of investor acceptance of funds devoted to sustainable investing strategies.

Executive Summary

I do not support the Proposal for a variety of reasons, described in more detail in the pages that follow. One reason I do not support it is that it is not apparent that investors, as opposed to investment managers, are clamoring for the kind of data and information that is proposed for disclosure in this Proposal. When allowed to invest in investment products that give them exposure to strategies

¹ Delahaye Advisers LLC is a Virginia-based independent consultancy focused on financial advisory.

² [Proposed rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors \(sec.gov\)](#)

consistent with environmental, social, and government principles (“Activist” funds), investors have demurred in terms of the number of funds invested in such products.

The Commission also recommends significant additions to the regular disclosures mandated under Regulation S-K and Regulation S-X for registered companies (“Registrants”), noting the existence of entities that accumulate and distribute much of the information the disclosures are intended to provide. Despite the struggle some investors find gathering this information, I do not believe it is in the best interest of investors that Registrants should endure the costs related to collecting and presenting this information in SEC documentation. Nor do I believe it will benefit financial markets. At the very least, the nature of the information proposed for disclosure should benefit from safe harbors given the uncertainties as to the effects of many activities on the climate.

As an analyst experienced in the search for and analysis of unique and disparate information, prepared by an array of different information providers, I understand the difficulties sometimes faced in locating data and qualitative information relating to a securities issuer of interest, or for many securities issuers. Despite the difficulties, however, I do not believe it is in the best interest of the markets or investors for the SEC to impose significant reporting burdens on issuers for information investors can acquire elsewhere. The burdens imposed by the Sarbanes-Oxley of 2002 were not as onerous as these, and yet they dissuaded many companies from raising capital in public markets.

Given the uncertainty about the veracity and quality of the information, the Proposals would mandate that Registrants collect and disclose, the broader the universe of information providers would appear the wiser course. Moreover, the Commission acknowledges the broad availability of the information it wants Registrants to disclose. Its concern is that such information is not sufficiently consistent to enable investors to make easy comparisons. Nowhere in the Commission’s mission statement does it state that shareowners in all Registrants must fund universal disclosure of potentially nonmaterial information to the marketplace.

Finally, it remains as yet unclear whether the SEC has the authority to impose such large-scale and costly disclosures upon Registrants and their counterparties. Should the courts find such authority does exist, the Commission should adopt a humble approach to that authority, particularly as it relates to this Proposal. One way to show such humility would be to grant Registrants a broad and permanent safe harbor over all disclosures mandated in the Proposal given the uncertainty both in how each Registrant’s business and products and services made affect the climate, not to mention the uncertainty in the quality of the information mandated for disclosure.

Comments

As noted in the Executive Summary I do not believe these disclosures are warranted due to the uncertainty about investor demand for such information, the questionable assumptions behind these disclosures, and the heavy burden they would create for issuers. Below I briefly describe the reasoning behind this view.

Investor Interest

It is clear from the summary of comments received in response to the March 2021 Request for Public Input (Request for Input),³ that the type of information sought in the Proposal holds great sway with a certain segment of the financial markets. Investment managers, in particular, conveyed support for the SEC mandating disclosure of a uniform set of disclosures on climate-related matters.

There is no organization on earth more attuned to the differing interests of investors and investment managers than the SEC. Regulation of such entities was one of the reasons the Commission was formed, and it has since developed a long track record of regulating those kinds of conflicts of interest. Yet, in multiple locations within the Proposal, the Commission infers the two are equivalent.⁴ I find this confusion troubling.

There are important reasons why investment managers might seek an SEC mandate for Registrant disclosure of such information. One is that the cost of acquiring relevant climate-related information from a variety of sources no doubt reduces profitability in a business already squeezed by low-cost index and exchange-traded funds. Having to purchase climate-related risk information from disparate sources no doubt is a drag on profitability.

Another plausible reason is investment managers' focus on developing and marketing investment products dedicated to the latest investment trends. In recent years, those products have strategies consistent with environmental, social, and governance-related principles ("Activist" funds). While managers have introduced an extensive line of Activist fund products in the past five years—one firm launched 74% of its Activist funds since 2017, even those Activist AUM is just 14% of the firm's total AUM—evidence indicates investors have yet to bite. According to Boston Consulting Group,⁵ total Activist AUM amounts to \$1.28 trillion, or 2.7% of total global AUM of \$103 trillion.

In sum, when given a significant opportunity to invest in Activist funds, investors continue to prefer fully diversified and low-cost index funds without an Activist mandate. This not only points to a potential difference in attitudes toward Activist products among investors and investment managers, but it also suggests that investors are not clamoring for the disclosures the Proposals would mandate.

The SEC could clarify this question by commissioning a broad and in-depth survey of investor perspectives and investment actions about Activist funds. Until then, however, it is unclear whether investors are uniformly in favor of such disclosures, and therefore the Commission should refrain from conflating the views of the two groups of market participants to impose the disclosures mandated within the Proposal.

Finally, given the frequency with which the Commission cites the perspectives of organizations whose primary purpose is more concerned with lobbying than investment management, the Commission

³ [SEC.gov | Public Input Welcomed on Climate Change Disclosures.](#)

⁴ For example, the Proposal states on page 18, "...as climate-related impacts have increasingly been well-documented and awareness of climate-related risks to businesses and the economy has grown, **investors have increased their demand for more detailed information** about the effects of the climate on a registrant's business and for more information about how a registrant has addressed climate-related risks and opportunities when conducting its operations and developing its business strategy and financial plans.²³ **It is appropriate for us to consider such investor demand** in exercising our authority and responsibility to design an effective and efficient disclosure regime under the federal securities laws." [Emphasis added]. In footnote 23 on that page, the Commission cites the 2020 Letter to CEOs from Larry Fink, CEO of BlackRock, as such an investor. In that same footnote, it describes Climate Action 100+ as "an investor-led initiative comprised of 615 investors **who manage \$60 trillion in assets.**" It concludes the footnote noting the "more than 500 investor signatories with assets under management of nearly \$100 trillion" as signatories to the CDP (Carbon Disclosure Project) climate risk disclosure program. Later, in footnote 856 on page 337, the Commission cites a 2021 CDP report, where it recognizes the discrepancy, noting that "Since inception, the NDC has **used the term 'investor' in reference to the campaign's largely asset manager participants.**" It said it would no longer use the term, "investor," in that context.

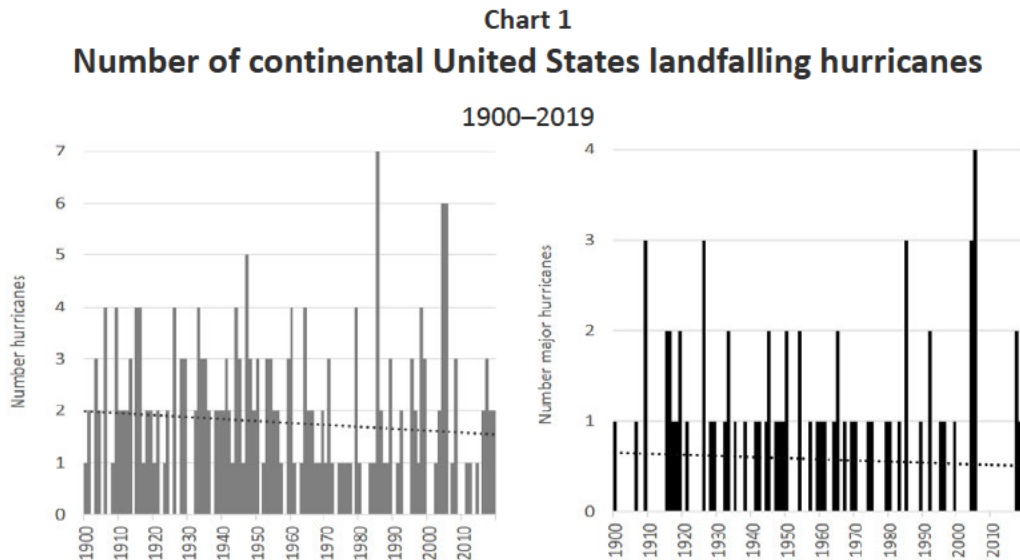
⁵ Global Asset Management 2021: The \$100 Trillion Machine, July 2021.

appears to give the views proffered by such organizations extra weight on important questions posed in the Proposal. Of course, these organizations have as much right as I to express their views on this or any other question in this or any regulatory proposal. Nevertheless, these entities' activities, like those of nearly all respondents to the Proposals and the Request for Input, can and do regularly conflict with the unique fiduciary obligations owed by investment professionals, as well. At the same time, I would hope even those organizations would want the Commission to give extra credence to the views of fiduciaries.

Climate change

The Commission notes that a reason for the disclosures is the implied increase in severity of climate-related events in recent years, citing specifically a record number of climate events that caused more than \$1 billion in financial damage. While a record number of seven climate events led to more than \$1 billion in monetary damages during 2020, the data and the year cited fail to provide important context to the circumstances behind the information.

First, the record number of high-cost climate events in 2020 was not indicative of either a large and rising number of overall climate events or an increase in the magnitude of the atmospheric severity of the events in question. While the damage wrought in 2020 did top \$1 billion, there were no billion-dollar events four times in both the 2000s and the 2010s. And the \$49 billion price tag in 2020 was both 39% below the damages incurred in 4 events in 2021 and nearly 7 times the price tag for damage from just 2 events in 2019. What is more, the frequency of major hurricanes in the decades since 2010 has been at a relatively low level and declining rate per Chart 1 below for the period from 1900 to 2019.



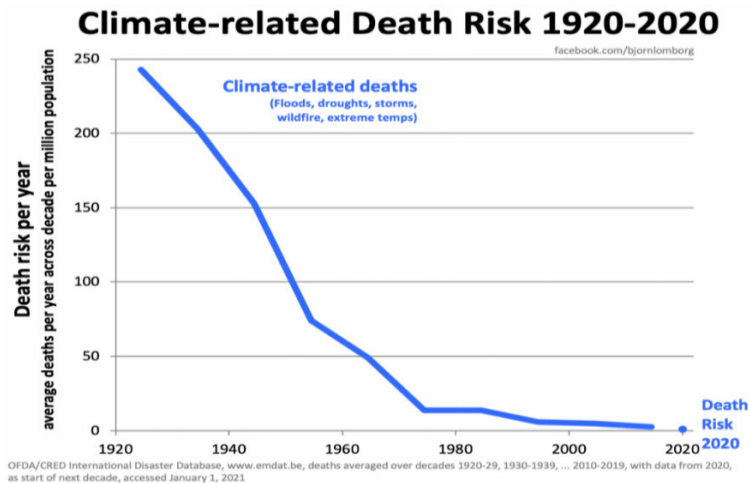
Left, all hurricanes, right, major hurricanes (category 3 and above), with (insignificant) regression lines, (Klotzbach et al. 2018), with 2018–19 from personal communication with authors. See [Welfare in the 21st century: Increasing development reducing inequality, the impact of climate change, and the cost of climate policies - ScienceDirect](#)

One might attribute the causes for the increased frequency of high-damage events in recent years to greater man-made security from the devastation of such climate-related events. The widespread availability of air conditioning, the enforcement of better construction codes, the use of stronger building material, together with better weather warning systems, and the eradication of malaria and similar diseases through medical advances, all have combined to increase the livability of regions in

previously lightly inhabited coastlines. Add to these improvements the availability of federal government-subsidized flood insurance, and it was inevitable that these regions would develop. In turn, these advances, all developed in the past century, put more insurable physical assets such as homes, autos, and commercial enterprises in harm's way. Improved living standards, therefore, have led to higher financial damages from storms that inevitably strike these areas.

Yet, even as development put more people in harm's way, the number of deaths from climate events was declining, and declining dramatically, from more than nearly 500,000 in the 1920s to far fewer than 10,000 so far in the 2000s. Again, the advanced cited above helped drive this dynamic.

Chart 2

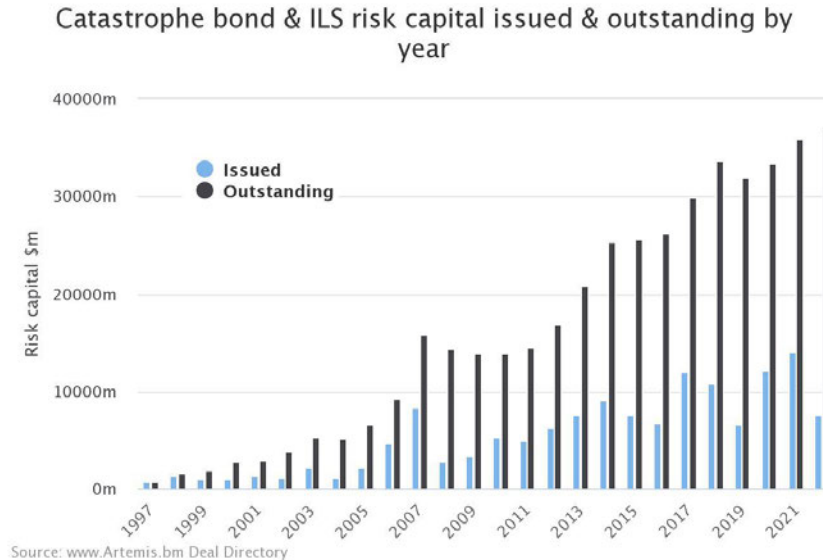


Plotted by Bjørn Lomborg. Data: The International Disaster Database, http://emdat.be/emdat_db/

Catastrophe bonds, a relatively recent innovation (within the past 20 years), provide an indication of investor expectations about the frequency and severity of climate events. Structured to cover damages that exceed a pre-established threshold for only the most devastating events,⁶ the instruments provide a form of reinsurance for global insurers. Based on the perceived concern about the effects of climate change on the world, one might reasonably infer that investors would shy away from instruments that might subject them to potential losses from a universally expected increase in large-scale climate-related events. A look at the rapid growth in institutional investor interest in these instruments, however, suggests otherwise. In terms of newly issued and outstanding cat bonds shown in Chart 3 below indicates investors increasingly recognize these as having a high degree of risk-adjusted value rather than a source for rising losses.

⁶ Two examples of the types of events that would reduce yields or produce loss of principal are the 1906 earthquake in San Francisco or the 1926 hurricane in Miami.

Chart 3



Of course, investors had shown little concern over growing concentrations of mortgage assets in the 2005 to 2008 period, either, an ambivalence that led to significant changes to the financial regulatory landscape beginning in 2010. The experience of the cat bond market is different in that these potentially high-risk instruments would trigger a capital-charge premium for institutional investors under the Basel capital standards, whereas mortgage loans and securitized mortgage loans were afforded a capital discount. Without a *de facto* capital subsidy, the cat bond market developed organically, connecting a need for reinsurance support for property and casualty insurers with a need for a diversified stream of uncorrelated returns for investors.

Is There a Need for Inclusion in SEC Filings?

In various parts of the Proposals, groups like CDP and the Task Force on Climate-Related Financial Disclosures (“TCFD”) are quoted about the number of companies that have adopted their approach for supplying climate-related information. CDP, for example, notes that 92 percent of companies responding to one of its surveys say they already apply the GHG Protocol’s standards and guidelines. Likewise, hundreds of registrants and companies, if not more, are said to have adopted and are using the TCFD recommendations for climate-related disclosures. Then some data providers have made it their business to collect, report, and distribute their data and related analyses of the kind of information the Proposal would mandate.

If investors and their agents already have access to the kinds of information the Proposal’s disclosures would supply, then why, one may reasonably ask, is the SEC proposing to force Registrants to go to the trouble and expense of disclosing it in SEC filings? One reason supplied in the Proposal is that the SEC wants greater comparability and consistency of the information. Yet, if companies already are applying CDP and TCFD protocols as both groups say, then isn’t that sufficient?

The Proposal gives another reason: the need to make companies liable for these disclosures to ensure greater care in their preparation.⁷ In part, disclosure in SEC filings would allow for stricter rules relating to disclosure of the information, particularly when it comes to GHG Protocol disclosures. The Proposals, I am told, would require audits for Registrants' Scope 1 (direct company activities) and Scope 2 (indirect company affiliate and subsidiary activities) activities under the protocol. The Proposal would not mandate an audit for a Registrant's Scope 3 activities (those involving the Registrants suppliers, customers, and other types of counterparties), but, I am told, would impose those costs on the Registrants' Scope 3 counterparties.

The combination of audited GHG disclosures with liability for inclusion in Commission filings will only worsen the burdens for Registrants. Companies and their counterparties likely will seek ways to mitigate or avoid these burdens by either going private or merging with other firms. Startups will likely get the message, too, and stay away from coming to the public market.

In the end, the demand for this information from investment managers will impose higher costs on Registrants and ultimately investors, particularly non-accredited investors, as reduced earnings cut security values. It will cull the list of companies with listed public shares, and dissuade potential newcomers from going public, with the result being fewer investment options for investors.

Finally, if implemented, the Proposals would reduce the business prospects for those who built businesses to gather, collate, and deliver data and analyses on these issues for interested market participants. Overnight, their investment management clients would get the information for free through SEC filings mandated by the Commission.

Conclusion

Even though investors and their investment management agents have access to relevant information about climate-related risks through a variety of sources and Registrants that already have adopted widely accepted disclosure protocols because that information is available for a fee in the same way that investment analysts and bond rating agencies sell their proprietary information and analyses to anyone willing to pay their fees. That is no reason for imposing costs on Registrants and, in turn, on investors for the benefit of investment managers.

In the end, I believe the costs of these proposals will be far too high in terms of:

- direct costs to Registrants,
- reduced share values for investors,
- reduced investment options for investors when Registrants delist to avoid the burdens of the Proposal, and
- further reductions in investment options when startups decide against going to public financial markets for capital.

In return, the market will receive esoteric information of uncertain veracity that only investment managers will use, even though their analysts likely understood the magnitude of the risks long before others tried to step in to require these disclosures.

⁷ See page 22: "Moreover, information filed as part of a registrant's Form 10-K carries certain additional potential liability, which itself can cause registrants to prepare and review information filed in the Form 10-K more carefully than information presented outside SEC filings."

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It is for the reasons delineated in the previous pages that I oppose these disclosures. I recommend the SEC reject the proposals and consider a revised and less onerous and costly disclosure regime, one that balances the needs of investors and Registrants with those of investment manager intermediaries.

Should the Commission decide to press forward with requiring these burdensome requirements, however, it should only do so under two circumstances. First, it should reject the auditing of the GHG Protocol disclosures. And second, it should apply a permanent safe harbor for these disclosures to shield Registrants from liability resulting from the uncertain quality of information they have no choice but to provide.

If you have any questions regarding my view and my comments, you may reach me by telephone at [REDACTED], or by email at [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read "James C. Allen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James C. Allen, CFA
Principal
Delahaye Advisers LLC