September 9, 2022

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

RE: Supplemental Comment Letter on Proposed Rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors, File No. S7-10-22

Dear Ms. Countryman:

The Society for Corporate Governance ("Society") submits this letter in response to the request for public comments by the Securities and Exchange Commission ("SEC" or the "Commission") on the proposed rulemaking, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," ("Proposed Rule") released by the Commission on March 21, 2022, and published in the Federal Register on April 11, 2022, at 87 FR 21334, File Number S7-10-22. Founded in 1946, the Society is a professional membership association of more than 3,600 corporate and assistant secretaries, in-house counsel, outside counsel, and other governance professionals who serve more than 1,600 entities, including 1,000 public companies of almost every size and industry.

This letter, which supplements our comment letter dated June 17, 2022,[1] follows engagements between Society leadership and each of SEC Commissioners Caroline Crenshaw, Jaime Lizárraga, Hester Peirce, and Mark Uyeda, in August and September 2022.[2] In particular, this letter responds to the Commissioners' support for our submittal of a supplemental letter focused solely on summarizing the numerous recommendations included in our June 2022 letter. Page numbers referenced below correspond with the relevant discussion or start of discussion of that topic in our June 2022 comment letter.

[1] Society for Corporate Governance, Comment Letter on Proposed Rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors (Jun. 17, 2022).
[2] Representatives of the Society for Corporate Governance met with SEC Commissioner Hester Peirce on August 19, 2022; SEC Commissioner Mark Uyeda on August 19, 2022; SEC Commissioner Caroline Crenshaw on September 6, 2022; and SEC Commissioner Jaime Lizárraga on September 7, 2022.

<u>**Recommendations**</u>

I. Recommendations on Specific Disclosures and Provisions in the Proposed Rule

GHG Emissions Disclosure (page 43)

Scope 1, 2, and 3

- Disclosure of Scope 1 and 2 emissions should be required only if material to the company. If required to be disclosed, Scope 1 and 2 emissions should be subject to widely recognized *de minimis* exceptions for immaterial subsets of categories of Scope 1 and 2 GHG emissions.
- Scope 3 emissions should be disclosed only on a voluntary basis regardless of materiality.[3] If required to be disclosed, Scope 3 should be subject to the longstanding materiality standard and the disclosure requirements should be clarified.
- Smaller reporting companies should be exempted as to any Scope 3 emissions disclosure requirements.

Targets and Goals (pages 21, 49)

- GHG emissions and climate-related target/goal setting disclosure should be required only if material to the company and publicly announced.
- Disclosure about progress towards a target or goal should only be required if such progress is material to the company and should be principles-based.
- If not subject to a materiality standard, GHG emissions and climate-related target/goal setting disclosure should be required only at a high level.
- If not subject to a materiality standard, the rule should provide an exception consistent with the SEC's previously established rules with respect to information that is not known and not available without unreasonable efforts or expense (*e.g.*, Rule 409 of the Securities Act and Rule 12b-21 of the Exchange Act).

Disaggregation (page 51)

- Disclosure of disaggregated GHG emissions should be required only if and to the extent an issuer already publicly discloses such aggregated data elsewhere and if material.

Disclosure Timing (page 51)

- Given that most companies don't have the proposed climate data when their Form 10-Ks are due, the data should be reportable later in the year (*e.g.*, 180 days after FYE) on a specially

[3] Of the 10 largest U.S. asset managers' comment letters analyzed by Morningstar, just one of the eight that submitted a standalone comment letter to the SEC supported mandatory disclosure of Scope 3 emissions at present. The top 10 list includes Vanguard, BlackRock, Fidelity Investments, Capital Group, State Street, T. Rowe Price, Invesco, JPMorgan, Franklin Templeton, and Dimensional. *See* Morningstar, Climate Disclosures: Not Quite as Easy as (Scope) 1-2-3 (Jul. 2022) ("Only one manager, Capital Group, favors mandatory disclosures of other indirect greenhouse gas emissions (Scope 3) at this time. The others are opposed to making such disclosures mandatory, citing a lack of maturity in measurement methods and an absence of materiality for many companies."). At least one of the other top 10 asset managers covered by the article that did not submit a standalone comment letter participated in a trade group letter that supported voluntarily-only disclosure of Scope 3 GHG emissions.

designated form to be *furnished* with the SEC. Alternatively, companies should be permitted to report the data once available and verified on the next appropriate Form 10-Q or 10-K.[4]

GHG Protocol (pages 33, 55)

- The GHG emissions-related methodologies should align with those of the GHG Protocol.
- Organizational and operational boundaries for reporting GHG emissions should be permitted to align with GHG Protocol or GAAP if the election is identified and the rationale explained.
- The allowance to exclude emissions from investments that do not qualify for the equity method should be expanded to apply to investments that are not recorded under the equity method of accounting, regardless of whether they qualify.

Governance Disclosures (page 55)

- Generally, the proposed strategy and risk management disclosures should be principles-based rather than prescriptive. Among other particulars, the proposed director climate expertise provision should be eliminated.[5]
- In lieu of the proposed disclosures, which are overly granular and would indirectly regulate company behavior without regard to shareholders' best interests, the SEC could update its 2010 Climate Change Disclosure Guidance to clarify that the current disclosure requirements in Regulation S-K apply to climate-related issues and to focus on industry-specific disclosure in recognition of the fact that not all companies are similarly situated when it comes to climate risk.
- The SEC Division of Corporation Finance could continue to use its sample comment letter process to evaluate companies' compliance with the securities laws.
- Any additional disclosure requirements should be principles-based, for example, delineation of specific categories for disclosure rather than the proposed detailed, prescriptive disclosure requirements. Along these lines, the SEC could amend current Regulation S-K risk and governance disclosure requirements to add language to indicate that climate-related information must be disclosed. The SEC could amend the current Regulation S-K risk and governance disclosure requirements to add language to indicate that climate-related information must be disclosed (*e.g.*, Item 407(h) could expressly require disclosure of the board of directors' oversight of climate-related risk).

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[4] Based on member input, as discussed in our June 2022 comment letter on the proposed rule, the Society estimated that Scope 1 and 2 emissions data generally takes six months to generate, and that estimated Scope 3 data takes considerably longer to collect, analyze, and verify for reporting purposes to the extent feasible. *See supra* note 1.

[5] According to Morningstar's analysis of comment letters submitted by the 10 largest U.S. asset managers, asset managers registered significant concerns with this proposed requirement. *See supra* note 3 at 13. ("Both the ICI and several asset managers who comment on this oppose the proposed disclosure regarding climate expertise at board level. T. Rowe Price's comment letter reflects the overall consensus: 'Although we support the requirement for enhanced transparency around climate risk governance, we recommend eliminating the requirement that registrants identify if a board member has climate-related expertise and the process and frequency of board-level discussions. Single-issue expertise is not a quality that we have traditionally sought in board members, preferring instead well-rounded candidates who are able to contribute in multiple ways to a company's governance."). At least one of the other top 10 asset managers covered by the article that did not submit a standalone comment letter participated in a trade group letter that requested elimination of the proposed climate expert director disclosure.

- Companies should be permitted to provide board and management disclosures in the proxy statement to avoid duplicative or isolated disclosure.

Strategy and Risk Management Disclosures (page 60)

- The proposed strategy and risk management disclosures should be principles-based rather than prescriptive.
- Disclosure of climate-related risks, including value chain-related climate risks, should be limited to risks reasonably likely to materially impact a company's financial statements and operations.
- The zip code requirement should be eliminated and replaced with a less prescriptive, more principles-based, approach to the disclosure of physical risks.
- In that analytical tools such as climate scenario analyses are likely to be competitively sensitive, the rule should provide for disclosure of the use of climate scenario analysis without requiring disclosure about detailed inputs, assumptions, parameters, and outputs.
- If detailed disclosure is nevertheless required, the rule should allow companies to submit a streamlined form of confidential treatment request to the SEC with respect to such disclosures if the companies believe that the information may be competitively sensitive.
- The rule should further provide a safe harbor given the nascent stage and ongoing development of these climate scenario exercises.

Regulation S-X (page 64)

- The proposed requirement to include climate-related metrics in the audited financial statements should be eliminated and replaced with an amendment to Item 303(b) of Regulation S-K that would require registrants to consider material climate-related impacts when discussing the results of operations, capital resources, and liquidity.
- If climate-related metrics in the financial statements are required, we recommend the following to make this disclosure feasible for companies:
    - The 1% threshold should be eliminated, and a principles-based materiality threshold should be adopted instead.
    - The absolute value concept should be eliminated.
    - Consideration of "lost revenue" and cost savings should be removed from any financial calculations.
    - "Financial impacts related to transition activities" should consider only those impacts that are entirely or primarily driven by a registrant's efforts to mitigate climate-related transition risks.
    - FASB should be directed to provide further accounting guidance.
    - The proposed requirement to include climate-related metrics in the financial statements for historical periods should be eliminated.
    - Safe harbors must be adopted for forecasting information in financial statements.

Assurance (pages 34, 71)

- The assurance requirement should be eliminated.[6] If required, it should be phased in as suggested below.

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[6] In our June 2022 comment letter on the proposed rule, the Society addressed, among other things, the prevalence among companies of obtaining third party assurance over GHG emissions data specifically, the assurance providers

Safe Harbors (page 74)

- Companies must be afforded appropriate safe harbors to safeguard against meritless litigation over new climate disclosure.
- The narrow safe harbor for Scope 3 emissions estimates provided in the proposal should be clarified and broadened to cover all of the new climate disclosures that would be required by the rule.
- The rule should provide a safe harbor for climate expert directors like that proposed for cybersecurity expert directors in the SEC's cyber disclosure proposal.[7]

Compliance Timeline (page 76)

General

- The SEC should adopt a sequential, layered phase-in schedule based on the degree of preparation, data, and external resources required for compliance, as suggested below:

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most commonly used for those companies that obtain assurance (many of which may not meet the proposed rule's independence and expertise requirements), the typically limited scope of assurance for those that obtain it, and the estimated costs of assurance, which are expected to exceed current assurance costs and far exceed the estimated costs included in the Proposed Rule release. *See supra* note 1.

[7] See SEC, Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, Release Nos. 33-11038; 34-943529; IC-34529, at 45-46 (Mar. 9, 2022). The Society did not support the proposed "cybersecurity expert director" provision contemplated by the March 2022 release for the same reasons that it did not support the climate expert director provision in the Proposed Rule. *See supra* note 5.

Requirement	Large Accelerated Filer	Accelerated Filer	Non-Accelerated Filer	Smaller Reporting Company
Qualitative/narrative disclosures only – climate-related risks and opportunities, governance and risk management processes, targets and goals, and transition plan and annual updates	FY 2024	FY 2025		FY 2026
Scope 1 and 2 emissions disclosure	FY 2025	FY 2026		FY 2027
Climate-related financial statement disclosures	FY 2026	FY 2027		FY 2028
Scope 3 emissions estimates	FY 2027	FY 2028		Exempt
Attestation report – limited assurance	FY 2027	FY 2028	N/A	N/A
Attestation report – reasonable assurance	FY 2028	FY 2029	N/A	N/A

Acquired Businesses (page 81)

- The SEC should provide additional phase-in accommodations with respect to acquired businesses:
  - A company should be permitted to omit acquired businesses from its climate-related disclosures, including financial statement disclosures pursuant to the proposed amendments to Regulation S-X, until the commencement of the first reporting fiscal year that begins no sooner than 12 months after the effective date of the acquisition (similar to the temporary exemption from the requirement to include an acquired business in management's report on ICFR).
  - Climate-related financial statement disclosures for acquired businesses should not be required for historical periods preceding the first reporting fiscal year with respect to such acquired businesses.

IPO Companies (page 81)

- All newly public companies should be permitted an additional two-year phase-in period.

Exemptions

- Foreign private issuers and debt-only issuers should be exempt from the final rule.

II. Global Issues

Materiality (page 9)

- The disclosure requirements should be aimed at eliciting material information.
- The definition of materiality should be consistent with the longstanding definition of materiality under the U.S. securities laws and Supreme Court precedent.[8]
- The disclosure requirements should focus on the materiality of the information to a reasonable investor's investment or voting decision for a particular company, not across an investor's portfolio.
- The disclosure requirements should be consistent with the time frames over which companies evaluate materiality.
- The rule should not require or pressure companies to disclose their non-materiality determinations, whether with regard to Scope 3 emissions or otherwise.

TCFD (page 31)

- The Proposed Rule's requirements should not exceed the TCFD recommendations.
- Based on the nascent or non-existing state of TCFD disclosure for most companies as well as numerous other relevant factors, the proposed compliance schedule should be extended and layered as suggested above.

Thank you for your consideration.

Respectfully submitted,

Randi Morrison
Senior Vice President – Communications,
Member Engagement and General Counsel
Society for Corporate Governance

cc: Chair Gary Gensler
Commissioner Hester Peirce
Commissioner Caroline Crenshaw
Commissioner Mark Uyeda
Commissioner Jaime Lizárraga

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[8] Of the 10 largest U.S. asset managers' comment letters analyzed by Morningstar, a majority expressed concerns about the proposed rule's deviation from the longstanding Supreme Court definition of materiality. The top 10 list included Vanguard, BlackRock, Fidelity Investments, Capital Group, State Street, T. Rowe Price, Invesco, JPMorgan, Franklin Templeton, and Dimensional. *See supra* note 3 ("A majority of the top 10 asset managers, and the ICI, agree that aspects of the proposed rule deviate from the Supreme Court's definition of materiality, with potential unintended negative consequences"). At least one of the other top 10 asset managers covered by the article that did not submit a standalone comment letter participated in a trade group letter that expressed concerns about the absence of and deviation from the longstanding definition of materiality.