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

May 19, 2022

Dear Sir\Madam:

I write in my personal capacity, and the views expressed in this letter represent only my personal views and not the views of Seton Hall University, Seton Hall Law School, or anyone else associated with Seton Hall.

I write this comment letter in response to the SEC's proposal titled "The Enhancement and Standardization of Climate-Related Disclosures for Investors", File Number S7-10-22 (the "Proposal"). Climate change is an issue of deep importance to the future of our specie. Across the globe, nations are struggling to address and prioritize this issue alongside other existential and important issues to quality and stability of life on our planet. Nations are also struggling to coordinate their responses with other nations. Ultimately, any solution to a problem of this complexity and magnitude will not be perfect and will emerge gradually through an incremental and somewhat disorganized process. Steps in the right direction are laudable, even if they are imperfect and represent experimentation. However, these steps must be taken in a rational manner rather than in response to desperate hopes or political agendas.

Rational deliberation requires asking hard questions, and the primary goal of this letter is to raise these questions for your consideration. A key question is whether the SEC's competencies are sufficient or would be adversely affected through adoption of the Proposal? The SEC has previously repeatedly discussed the challenges of using non-financial metrics in disclosure. These cautionary notes apply perforce to metrics reporting emissions and other climate related activities and targets. Many of these quantities are difficult to measure, and unlike financial metrics, all of them do not reconcile to dollars reflected objectively in company accounts. Will these quantities be reliable? Can they be made consistent across companies? Can the SEC build competencies comparable to its staff of accountants in assessing these disclosures and the processes by which they are made? When an issue that is relevant to investors and also politically charged becomes a disclosure focus to the exclusion of other issues relevant to investors, does that erode market confidence in the SEC's competency and impartiality? Why isn't the SEC coming out with similar guidance that addresses other important issues that may affect investments such as antibiotic resistance, eroding achievement in math and science among U.S. primary school students, abundance of unhealthy foods leading to diabetes and other health conditions, growing gridlock in Congress, deterioration in public discourse observed in media and other information channels, or the increased competence and competitiveness of businesses outside of the U.S.? There are myriad important issues susceptible to similar disclosure standards that are of general applicability or relate to one or a few industries. Why focus on something that is political as opposed to focusing on other important and less divisive issues? In this respect, I generally commend the SEC's efforts in regard to cybersecurity disclosure.

The above questions are relevant to many aspects of the Proposal. But the lack of adequate deliberation is most troubling in regard to proposed disclosure of Scope 3 emissions. The Proposal acknowledges that:

> *"It may be difficult to obtain activity data from suppliers and other third parties in a registrant's value chain, or to verify the accuracy of that information. It may also be necessary to rely heavily on estimates and assumptions to generate Scope 3 emissions data."*

Measures of Scope 3 emissions turn on complex, non-verifiable assumptions. See World Business Council for Sustainable Development and World Resources Institute, The Greenhouse Gas Protocol, A Corporate Accounting and Reporting Standard (Revised Edition), available at https://ghgprotocol.org/corporate-standard. A simple example illustrates that quantification of Scope 3 emissions is generally a distraction and an invitation for posturing, rather than a source of genuinely actionable information for investors. Consider a retailer that has a number of wholesale suppliers, which own and operate their own fleets of delivery vehicles. How should the transportation-related emissions from wholesalers be included in the retailers' Scope 3 emission disclosures? If each trip from a wholesaler to the retailer does not serve other firms, the emissions from the energy expended in the trip may be included in Scope 3 emissions. But what if a truck visits multiple retailers on the same trip? And what about the emissions related to manufacturing and maintaining the truck? Or the emissions related to the labor that loads, unloads, drives and otherwise operationalize logistics? What about the emissions footprint of the warehouse that stores wholesale goods? And the list goes on. Allocating third parties' emissions, at least outside the Scope 2 context, poses challenges far more substantial than allocating overhead or other shared resources. That is because overhead must be split across a firm's activities in a manner that adds up to its total cost; in contrast, Scope 3 emissions are shared between firms in the same value chain without any binding constraints on how they are allocated across those firms.

Scope 3 emissions are a conceptually useful complement to Scope 1 direct emissions data. For many decades, we have understood that production is organized both within firms and across firms. Understanding how third parties' emissions figure into a production process that only partly takes place within a firm helps with an understanding of how that process impacts the environment. However, allocating indirect emissions beyond Scope 2 energy usage is a deeply judgment laden exercise. It also leads to double counting emissions as firms within a vertical report both their Scope 1 and their indirect emissions. It should be expected that any requirement to report Scope 3 emissions will make firms that rigorously seek to identify their indirect contribution subject to reputational penalties, while firms understating those contributions will be rewarded. Because verifiability is lacking, this dynamic is highly likely to take place ultimately eroding trust in disclosure more generally. Asking for disclosure of Scope 3 emissions is thus akin to asking management about their attitudes towards charitable giving – a question that elicits little information that is credible enough to be actionable and that will punish honesty. SEC disclosure should not be a place for posturing, as prior releases on non-GAAP and non-financial metrics recognize.

Instead of requiring reporting of Scope 3 emissions data, the SEC should recommend that the EPA or another body is Congressionally authorized and resourced to collect and publish actionable industry-specific data on emissions generated through a value chain. Not only will this produce far more credible and actionable information, it will also cover firms that are not subject to public disclosure requirements.

They say hard cases make bad law. Climate change is an exceptionally important and difficult challenge. But the SEC's reputation and competence should not be overly compromised to meet this challenge. Please reflect deeply before choosing how to implement the Proposal.

Sincerely,

Ilya Beylin

Professor Ilya Beylin