Monday October 17, 2022

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

RE: Proposed Rule "The Enhancement and Standardization of Climate-Related Disclosures for Investors" ("Proposed Rule"), Attention: 87 FR 21334; Docket ID: SEC-2022-06342; File No. S7-10-22

Dear Ms. Countryman,

Thank you for the opportunity to comment on the Security and Exchange Commission's (SEC) Proposed Rule, "The Enhancement and Standardization of Climate-Related Disclosures." I am writing on behalf of Evergreen Action and John Kostyak of Kostyak Strategies. Evergreen Action is a national non-profit helping lead the fight to put bold climate action at the top of America's agenda, implement an all-out mobilization to defeat climate change, and create millions of good jobs in an equitable clean energy economy.

We commend the SEC's proposed rule for expanded climate transparency. At the same time, we are writing to call upon the SEC to ensure that scope 3 emissions are included in the final proposed rule, especially given the new economic and political context of the Inflation Reduction Act (IRA).

Accordingly, we would like to submit comments in the form of an article we co-authored with John Kostyak and published on October 6, 2022, which outlines the importance of the SEC's climate disclosure rule and the inclusion of scope 3 emissions in the wake of the IRA's passage.

What Does the Inflation Reduction Act Mean for the SEC's Climate Disclosure Rule?

By Evergreen and John Kostyack

Since the U.S. Securities and Exchange Commission (SEC) issued their climate disclosure proposal in March 2022, fossil fuel industry executives and their allies have launched an all-out campaign to stop this common-sense measure in its tracks.

The SEC's proposal would require public companies to disclose their greenhouse gas pollution and other data regarding the climate-related financial risks they face. Opponents of the rule – like the American Petroleum Institute (API) and the same attorneys general who helmed the *West Virginia v. EPA* Supreme Court case – have spun a sky-is-falling narrative that exaggerates the rule's cost and implementation challenges and denies the reality of climate risk.

But each of these narrative ploys are really designed to conceal the weaknesses of their fossil fuel-centered business model.

In particular, many in the pro-fossil fuel expansion camp have attacked the need to address “transition risk,” a concept that refers to the economic impact that large-scale changes in clean energy policies, technologies and customer preferences have on a company’s long-term profitability. They argue that these dramatic changes are not currently a serious enough risk to companies’ bottomline and thus have no need to be disclosed to investors.

On August 16, 2022, President Biden signed the *Inflation Reduction Act* (IRA) into law, injecting $369 billion in climate investments into the economy. It represented the single largest boost to clean energy in American history, and an irrefutable economic signal that clean energy is the way of the future. The rapid scaling of wind, solar, batteries, electrolyzers, and other technologies driven by this law will lead to dramatic cost reductions. These cost reductions will create an economic imperative for businesses and consumers around the world to switch to clean energy technologies. They will also motivate policy makers at the local, state, national and international levels to enact even more clean energy incentives and mandates.

The IRA is a perfect example of why investors need to know how companies are managing transition risk. Companies with strong plans for decarbonization will benefit enormously from this law. Businesses reliant on fossil fuels will likely lose market share. And carbon-intensive business models lose their dominant status, billions in fossil fuel assets could be stranded, causing a shock to the financial system. Investors deserve reliable emissions disclosures from companies so they can assess which are truly prepared for the clean energy transition.

To understand transition risk, investors need a full picture of a company’s emissions. And this picture cannot be complete without “Scope 3 emissions,” or the emissions of customers and suppliers, *which account for the largest share of most companies’ greenhouse gas emissions.*

The SEC’s statutory mandate is to protect investors by making sure companies disclose how prepared they are for major market shifts, like the transition to clean energy. Now, the U.S. government has just supercharged this transition with the passage of the IRA. That’s why the SEC’s climate disclosure rule must be strengthened to *require* companies to disclose *all of their* emissions.

President Biden, Treasury Secretary Janet Yellen, and Securities & Exchange Commission (SEC) Chair Gary Gensler must act to mitigate climate-driven risks to the economy. That effort should include SEC promulgating a strong climate disclosure rule that includes mandatory disclosure of Scope 3 emissions.

The good news is that the SEC’s proposal would require public companies to disclose some of their greenhouse gas emissions to investors. The bad news is that it does not require *all* of their emissions to be disclosed. The proposal requires the disclosure of “Scope 1 emissions,” which a

company creates in its own operations, as well as "Scope 2 emissions," which come from the generation of purchased energy. Scope 3 emissions, however, which are all other emissions associated with a company's activities, are almost entirely left up to each company's discretion to disclose. In short, under the proposal, unless you are a company that has set a target for reducing Scope 3 emissions, disclosing Scope 3 emissions is essentially voluntary.
That's a major problem for investors trying to understand a company's transition risk because for most companies, *most of their emissions are Scope 3 emissions*. In fact, CDP estimated that Scope 3 emissions account for roughly 75% of greenhouse gas emissions in sectors important to the energy transition. That means investors will be left in the dark about the bulk of most companies' emissions, and can't properly evaluate how vulnerable their supply chain and customer base is to transition risk.

What would it look like for the IRA to impact a company with high Scope 3 emissions? It's relatively straightforward that an oil company, with high Scope 3 emissions from the burning of oil to drive a car, would be exposed to declining demand for gas-powered cars due to the IRA's electric vehicle incentives. But other companies' level of Scope 3 emissions are not so easy to predict. Manufacturing companies, for instance, can have varying levels of upstream emissions from their suppliers, and thus their exposure to emissions regulations would be harder for an investor to assess.

It is crystal clear that the IRA and future climate legislation will have dramatic impacts on the economy, and that the narrative pushed by fossil fuel lobbyists that this is not a concern for today's investors is not only wrong, but reckless. Transition risk is a real and present transparency oversight and unless investors are given the information they need to intelligently allocate capital, could result in a climate-fueled economic crash.

In the wake of the IRA's passage, the SEC must strengthen the climate risk proposed rule to include the mandatory disclosure of Scope 3 emissions and finalize it immediately."

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In conclusion, Evergreen Action respectfully urges the SEC to strengthen the proposed rule by requiring disclosure of Scope 3 GHG emissions for all registrants, with reasonable assurance obtained. The SEC should not permit companies to self-determine if their Scope 3 emissions are "material," as currently proposed by the rule.

Thank you for this opportunity and your consideration.

Best wishes,
Mattea Mrkusic
On behalf of Evergreen Action and John Kostyak of Kostyak Strategies.
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