J. Brendan Herron

November 1, 2022

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

Re: Submission in response to File Number S7-10-22 Enhancement and Standardization of Climate-Related Disclosures for Investors ("Proposed Disclosures")

Dear Ms. Countryman,

Thank you for the SEC's efforts to address climate change, and the opportunity to submit comments. I recently participated in a video discussion where Chairman Gensler emphasize the need for the rules to be defensible in court and have provided these comments with a focus on defensible rules.

My background includes approximately 20 years' experience as a senior executive focused on climate change solutions, including developing the concept for, leading the IPO and serving as the CFO of a climate solutions public company. I have engaged with hundreds of investors while raising, and overseen the investment, of several billion dollars in climate solutions. I also serve as an advisor to several climate focused companies. I have extensive hands-on knowledge of climate change, renewable energy and energy efficiency, TCFD implementation, and carbon accounting and carbon credits, as well as public reporting requirements both from the CFO and an investor viewpoint.

My experience has shown that addressing climate change is a journey with companies and investors at various stages along the path and with a high likelihood that along the way, there will be missteps and course corrections.

For example, a recent Bloomberg article describes in detail that the present scope 2 rules and the certain renewable energy credits allow companies to report reduced carbon emissions without measuring if their emissions have actually been reduced.[1] Similarly, WattTime, a subsidiary of the Rocky Mountain Institute, recently released a white paper calling for refocusing the "Scope 2 methodology in ways that could guide institutions towards higher-impact choices and investments."[2] As a result of these and other comments, the World Resources Institute who developed the scope methodology and its partners are now reevaluating the decision and have started a review of the standard with a particular focus on how electricity emissions are measured. But any changes aren't expected for at least two years.[3]

Given the early stage of climate solutions, I believe it is appropriate to encourage disclosure in a way that engages companies to focus on the ultimate goal of reducing carbon and adapting to climate change while not penalizing them for where they are in the journey or for likely course corrections. Accordingly, I offer four recommendations:

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[1] "What Really Happens When Emissions Vanish", Ben Elgin and Sinduja Rangarajan, Bloomberg.com, October 31, 2002. Available at https://www.bloomberg.com/news/features/2022-11-01/intel-p-g-cisco-among-major-companies-exaggerating-climate-progress?sref=sK8JGy19

[2] "Accounting for Impact, Refocusing GHG Protocol Scope 2 methodology on 'impact accounting", Watt Time, September 2022. Available at https://www.watttime.org/app/uploads/2022/09/WattTime-AccountingForImpact-202209-vFinal2.pdf.

[3] "What Really Happens When Emissions Vanish", Ben Elgin and Sinduja Rangarajan, Bloomberg.com, October 31, 2002.

1. **The requirements should recognize that improving climate disclosures is a process and should be focused on what is material**.

   The goal should be to inform investors as to the current stage of their climate journey and how the company plans to improve. Requiring companies to move from no disclosure to zip code level or 1% materiality level disclosures even if phased in over several years, is unlikely to result in useful information to investors while placing high-cost burdens on companies, risking the entire rules being overturned and distracting, or even discouraging, companies from actually investing to reduce carbon or lower their climate risk.

2. **Climate disclosure should be added to and focused in the MD&A section of the 10K**

   The current MD&A requirements (Item 303) requires disclosure of information relevant to a company's financial condition and addresses a number of items material to investors including liquidity and capital resources

   Given this section is intended to address items material to investors, it would seem appropriate that any climate disclosures, including TCFD disclosures, be included in Item 303 by adding a new section to include risks, organizational structure and the financial impact modeled on TCFD. Like other material information in the MD&A, management should be able to tailor the disclosure to what is material to the business and investors and carry similar liability to the rest of 303.

3. **Both the companies and the rules need to have the ability to provide for innovation and improvement**

   It is highly unlikely that the SEC rulemaking process, especially if there is a change in administrations, will be able to keep up with the rapidly changing climate solutions market and changes in reporting methods like Scope 2. While the climate related frameworks may be widely used, as the above quoted articles discuss, they are not mature and may in fact, be misleading or encourage behaviors that actually increases greenhouse gas emissions. Many forward-thinking organizations are trying to develop new and improved methods of reporting, or of reducing their greenhouse gas emissions, and the existing frameworks or proposed rules, especially with associated legal liability may not allow these practices or not reward the additional effort to implement them. Establishing the rules in the format of the currently proposed hard standards that require rule making for changes instead of guiding principles will likely result in rules that are quickly outdated and thus more likely to be successfully challenged in a multi-year court process.

4. **Justification for attestation requirement is not likely to hold up to a lawsuit and it is far more important to require disclosure of the use of offsets, recs and credits.**

   The Proposed Disclosure the attestation requirement because the information is "not derived from the books and records used to generate the audited financial statements.[4]" However, this justification is incorrect as the calculation for Scope 1 and 2 is based on electricity, coal, natural gas or other energy used which is billed, recorded and paid through the accounts payable system, an integral input into the audited financial statements and a focus of any SOX controls. Thus, the only part of the calculation that is not part of the accounting system and SOX controls is the emissions factor that typically comes from a third party (like the EPA). As discussed in the articles, requiring more details around where energy is used and any offsets, recs or credits claimed would be much more helpful than attestation.

[4] Proposed Disclosure pg. 220 to 221

I am happy to answer any questions or provide additional information and for making changes to the rules that will allow for more flexibility and impact and hopefully help to reduce carbon emissions

Thank you for considering my comments.

Brendan Herron