Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

June 17th, 2022

File No. S7-10-22
Proposal on Climate-Related Disclosures for Investors

Thank you for the opportunity to provide comments to the Securities and Exchange Commission ("the Commission") on the captioned Proposed Rule released on March 21, 2022, and published on April 11, 2022 relating to climate-related disclosures ("the Proposed Rule").

The undersigned *Associação Brasileira das Companhias Abertas* (Brazilian Association of Publicly Held Companies, or "ABRASCA") and *Instituto Brasileiro de Relações com Investidores* (Brazilian Institute of Investor Relations, or "IBRI") recognize the importance of the Commission's mission of protecting investors, maintaining fair, orderly, and efficient markets, facilitating capital formation, and promoting public trust in the market environment. We appreciate the significant amount of time and effort the Commission and the Staff have put into developing the Proposed Rule and creating greater market transparency. The comments expressed in this letter represent the views of ABRASCA and IBRI, but have not been individually approved by, and therefore do not represent the individual position of their members.

ABRASCA

ABRASCA is a not-for-profit entity that brings together, since 1971, the most important publicly held companies in all sectors in Brazil. ABRASCA's members represent more than 80% of the total market capitalization of B3, the Brazilian stock exchange. ABRASCA's mission is to advocate for the interests of Brazilian issuers and their shareholders, with a view to create a fair, adequate and efficient regulatory system.

IBRI

IBRI is a not-for-profit entity created in June 1997 with the purpose of aggregating Investor Relations professionals in the Brazilian capital market. IBRI's mission is to train and value the Investor Relations professionals, stimulating and promoting best practices of Brazilian companies and such professionals.

While we do not seek to comment on every item contained in the Proposed Rule, we do have concerns and suggestions on specific items, as set forth below.

A. Financial Statements Note – The 1% Threshold

The Proposed Rule would create a new Article 14 of Regulation S-X requiring a registrant to include specific climate-related financial disclosure in the notes to its audited financial statements. In particular, registrants would be required to include disaggregated information about the impact of climate-related conditions and events, and transition activities, on the consolidated financial statements included in the relevant filing, unless such impact is less than one percent of the total line item for the relevant fiscal year.

We believe that such threshold is excessively low and will present significant complications for the registrants' systems and internal controls, without necessarily presenting materially useful information to investors. Registrants will need to develop systems to analyze and classify the information required under the Proposed Rule, and they will need to integrate those systems with existing financial reporting systems and Internal Control over Financial Report (ICFR).

Also, each of the financial impact metrics must be presented “on an aggregated line-by-line basis for all negative impacts and, separately, at a minimum, on an aggregated line-by-line basis for all positive impacts.” However, for purposes of determining whether the disclosure threshold has been met, a registrant would be required to aggregate the absolute value of the positive and negative impacts on a line-by-line basis, which makes the threshold even lower. For example, a 0.5% negative impact aggregated with a 0.5% positive impact would already trigger the 1% threshold, while the real utility for the investor would be the net financial impact (zero).

In addition, the Commission argues in its release that the “one-size-fits-all” materiality threshold will promote comparability and consistency among different registrants compared to a principles-based approach. While we understand the argument, we believe that a principles-based approach would be preferable since it would allow registrants with different sizes and in different industries to evaluate the materiality threshold that would make more sense, taking into consideration guidance and pronouncements from accounting bodies, discussions with their auditors and benchmarking with comparable registrants. A fixed low materiality threshold tends to become obsolete with time and may produce an unreasonable burden to smaller companies or certain industries.

For the reasons above, we respectfully suggest the Commission to consider one of the followings approaches: (i) change the materiality threshold to a principles-based approach, in which every company may calculate and explain its threshold; or (ii) raise the threshold to 5% or more.

B. The Financial Statements Note – Periods to be Presented

Under the Proposed Rule, the financial metrics shall be required for all periods for which financial statements are presented (typically two years for the balance sheet and three years for the income statement). We believe that the quantification of the financial impact metrics will already be challenging with respect to the first period after the Proposed Rule becomes effective, let alone for prior periods. We anticipate significant difficulties in obtaining such information for comparative periods in the first years of presentation .

Although the Commission permits the omission of such information in prior periods if “it is not reasonably available without unreasonable effort or expense”, it would be preferable to make disclosure of prior periods voluntary and let registrants whether they want to disclose prior periods in light of the costs, effort and expense involved vis-à-vis the anticipated utility for investors.

For the reasons above, we respectfully suggest that financial impact metrics of climate-related conditions and events on the consolidated financial statements should be required only for the first fiscal year and subsequent years after the new disclosure standards become applicable, and not for prior years in terms of providing comparative information.

C. Financial Statements Note – Impracticability

Under the proposed Article 14 of Regulation S-X, registrants would be required to include disaggregated information about the impact of climate-related conditions and events, and transition activities, on the consolidated financial statements included in the relevant filing, unless such impact is less than one percent of the total line item for the relevant fiscal year. We anticipate significant difficulties, including impracticability, in obtaining such disaggregated information when the impact is a result of a mixture of factors (e.g., a factory shutdown due to an employee strike that occurs simultaneously with, or in close proximity to, a severe weather event).

For the reasons above, we respectfully suggest that a registrant could inform that it was unable to disclose the information on a disaggregated basis due to impracticability when the related impact is a result of a mixture of factors.

D. Financial Statements Note – Severe Weather Events and Other Natural Conditions

Under the proposed new Article 14 of Regulation S-X, registrants would be required to disclose in the notes to its audited financial statements, among other things, the financial impacts of severe weather events and other natural conditions, and related expenditures to mitigate risks of such severe weather events and other natural conditions. Although the Proposed Rule has provided some specific examples of such events and conditions, in our opinion, the climate-related events that are covered by "severe weather events and other natural conditions" are unclear under the proposals. Accordingly, the lack of a definition or additional guidance related to such events and conditions may harm comparability and consistency among different registrants.

For the reasons above, we respectfully suggest that (i) the disclosures related to severe weather events and other natural conditions should be limited to only certain examples of severe weather events and other natural conditions specified by the Commission; or (ii) the Commission provides additional guidance or examples about what events would be covered by "severe weather events and other natural conditions", since the concept here is too wide to be achieved without additional guidance.

E. Financial Statements Note – Financial Estimates and Assumptions

Under the proposed new Article 14 of Regulation S-X, registrants would be required to disclose in the notes to their audited financial statements, among other things, whether the estimates and assumptions used to produce the consolidated financial statements were impacted by exposures to risks and uncertainties associated with, or known impacts from, climate-related events and by risks and uncertainties associated with, or known impacts from, a potential transition to a lower carbon economy or any climate-related targets disclosed by the registrant. Such proposal does not provide a threshold to determine the estimates and assumptions that would be required to be disclosed in the notes. Hence, it may lead to excessive, irrelevant disclosure that would cloud investors' understanding of the material aspects of financial statements.

For the reasons above, we respectfully suggest that the disclosure of estimates and assumptions associated with climate-related events and transition activities should be limited to those that have materially impacted, or could have been reasonably expected to materially impact, the financial statements.

F. Financial Statements Note – Segment Level and Cost of Capital

[The Commission requests comments as to whether registrants should be required to disclose the financial statements metrics at a reportable segment level (request for comment #54) and whether registrants should disclose changes to the cost of capital resulting from the climate-related events (request for comment #69).]

In our opinion, the disclosure of the financial statements' metrics at a reportable segment level may lead to excessive, irrelevant disclosure that would cloud investors' understanding of the material aspects of financial statements.

We also believe that the disclosure of changes to the cost of capital resulting from the climate-related events may pose significant challenges.

In this context, in response to request for comments 54 and 69 of the adopting release, we believe that the Commission should not require registrants to disclose the financial statements metrics at a reportable segment level neither the changes to the cost of capital resulting from the climate-related events.

G. Financial Statements Note - Inclusion of Climate-Related Metrics

Under the Proposed Rule, the proposed financial statement metrics would be included in the scope of any required audit of the financial statements. However, under the International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards

Board ("IASB"), the proposed financial statement metrics are not required. In our opinion, decision-useful information to investors would also be provided if financial statement metrics were required to be disclosed as unaudited supplemental financial information instead.

For the reasons above, for Foreign Private Issuers (or "FPIs") that file consolidated financial statements under IFRS as issued by the IASB, we respectfully suggest that the proposed financial statement metrics be allowed to be disclosed as unaudited supplemental financial information.

H. Disclosure Regarding Climate-Related Impacts on Strategy, Business Model and Outlook – Internal Carbon Price

Pursuant to the Proposed Rule, a registrant would be required to disclose an internal carbon price. In particular, registrants would be required to disclose the price in units of the registrant's currency ton of CO_{2e}, the total price, the boundaries for measurement and the rationale for selecting the internal carbon price applied.

The proposed rule is not clear on whether internal carbon prices used in a sensitive or scenario analysis of projects under evaluation should be disclosed. While carbon prices can take a variety of forms and amounts, and a variety of ways that the cost of carbon can be integrated into business practices, disclosure of how internal carbon price is used would provide transparency.

For the reasons above, we respectfully suggest that a registrant could only disclose qualitative information about how the internal carbon price is used in registrant's business strategy.

I. The Attestation Requirement

Under proposed Item 1505 of Regulation S-K, a registrant that is an accelerated filer or a large accelerated filer would be required to provide an attestation report covering Scopes 1 and 2 GHG emissions disclosure. The attestation report shall be prepared and signed by an independent provider who is an expert in GHG emissions.

While both the Task Force on Climate Related Financial Disclosures (TCFD) framework and the GHG Protocol contain general guidance on the verification of GHG emissions data, neither imposes a mandatory requirement for the verification of such data by an independent third party. Similarly, applicable laws in different jurisdictions generally do not require mandatory third-party attestation of GHG emissions.

We believe that the cost of third-party attestation could be significant for registrants. Imposing an attestation requirement on all registrants would cause the development of a new industry of third-party service providers, without necessarily bringing value to investors.

Therefore, the attestation report required is complex and time consuming, and we believe that the deadlines in the Proposed Rules for such report may not be feasible.

For the reasons above, for all registrants, we respectfully suggest that (i) the third-party attestation of GHG emissions should be voluntary; (ii) the attestation work should not follow pre-defined levels of assurance (limited vs. reasonable assurance); and (iii) the attestation report should not be required to be filed with the Commission (but only available elsewhere in other forms of disclosure) to avoid triggering expert liability and further increasing the fees charged by the attestation providers.

In addition, the Commission has repeatedly offered regulatory accommodations to FPIs[1], and permitted FPIs to abide by the laws and regulations of their home jurisdiction or stock

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[1] FPIs receive certain regulatory concessions compared to those received by U.S. domestic issuers. For example: (i) *annual reports:* FPIs must file their annual reports on Form 20-F within four months after the fiscal year (compared to 60 or 90 days applicable to domestic issuers filing their annual reports on Form 10-K); (ii) *quarterly reports*: FPIs are not

exchange(s), and we believe that the FPIs should receive regulatory concessions with respect to the attestation requirement. ***We respectfully suggest that FPIs should be exempt from the requirement to provide a third-party attestation report covering Scopes 1 and 2 GHG emissions, unless such report is required by the laws and regulations of their home jurisdiction or stock exchanges, or if an FPI has decided to contract such attestation voluntarily or by virtue of contractual obligations. Alternatively, we request that the Commission allows a longer phase-in period for FPIs to comply with the obligation to provide the GHG emissions attestation report.***

J. GHG Emissions Methodology

Under the proposed rules, a registrant would be required to set the organizational boundaries for its GHG emissions disclosure using the same scope of entities, operations, assets and other holdings within its business organization as those included in, and based upon the same set of accounting principles applicable to, its consolidated financial statements.

According to GHG Protocol, two distinct approaches can be used to consolidate GHG emissions: The equity share and the control approaches. The GHG Protocol provides flexibility to registrants to choose methods and approaches that meet the circumstances of their business, as long they are transparent about the methods and assumptions used.

For the reasons above, for all registrants, we respectfully suggest that Commission (i) require registrants to use the organizational boundary approaches recommended by the GHG Protocol (e.g., financial control, operational control or equity share); (ii) permit a registrant to choose one of the approaches recommended by the GHG Protocol.

K. Scope 3 GHG Emissions Disclosure

Pursuant to the Proposed Rule, a registrant would be required to disclose Scope 3 GHG emissions if “material” or if the registrant has set a GHG emissions reduction target or goal that includes its Scope 3 GHG emissions. The requirement is not applicable to smaller reporting companies (or “SRCs”).

Initially, we note that the definitions, methodologies and disclosure standards of Scope 3 GHG emissions are still evolving and being gradually improved around the world with the work of industry experts and the academic community. A mandatory requirement by the Commission might be counterproductive.

Without an internationally accepted methodology for calculating Scope 3 GHG emissions, mandatory disclosure required by the Commission will not serve to achieve greater transparency if different companies may report based on different inputs and definitions. ***We believe that the Commission should not create a mandatory requirement of Scope 3 GHG emissions disclosure until there is a more accurate and widely accepted methodology for calculating Scope 3 GHG emissions.***

In addition, the Commission has repeatedly offered regulatory accommodations to FPIs[2], and we believe that the FPIs should receive regulatory concessions with respect to Scope 3 GHG emissions. ***We respectfully suggest that, in addition to SRCs, FPIs should also be exempt from such requirement, unless disclosure of Scope 3 GHG emissions is required by the***

required under U.S. federal securities laws to file or make public quarterly financial information; (iii) *proxy solicitation*: FPIs are not required under U.S. federal securities laws or the rules of the U.S. national securities exchanges to file proxy solicitation materials on Schedule 14A or 14C in connection with annual or special meetings of shareholders; (iv) *audit committee*: there are numerous accommodations to the nature and composition of an FPI’s audit committee or permitted alternatives; (v) *management compensation disclosure*: an FPI is exempt from the detailed disclosure requirements regarding individual executive compensation and compensation analysis (an FPI is required to make certain disclosures regarding executive compensation on an individual basis unless it is not required to do so under home-country laws and the information is not otherwise publicly disclosed by the FPI); and (vi) *directors’/officers’ equity holdings*: directors and officers of an FPI do not have to report their equity holdings and transactions under Section 16 of the Exchange Act, subject to certain exceptions.

[2] See footnote 1 above.

laws and regulations of their home jurisdiction or stock exchanges, or if such FPIs calculate and disclose Scope 3 GHG emissions voluntarily or by virtue of contractual obligations. Alternatively, we request that the Commission allows a longer phase-in period for FPIs to comply with Scope 3 GHG emissions disclosure.

L. Climate Targets and Goals

Under Item 1506 of Regulation S-K, registrants will be required to disclose if they have set any targets or goals related to the reduction of GHG emissions or any other climate-related targets or goals. The Proposed Rule does not use any materiality threshold, but instead require the disclosure of all such targets and goals. Also, the Proposed Rule is not clear if registrants will be required to disclose in their SEC filings only the targets and goals that have been publicly disclosed, or *any and all* climate targets and goals, even if not public. For example, will the registrant be required to incorporate in its SEC filings the climate-related targets and goals published on its website or its sustainability reports? Would a registrant be required to disclose the climate-related targets and goals included in its financing agreements with lenders or business partners, or negotiated with environmental authorities or organizations? Would a registrant be required to disclose its internal climate-related targets and goals? Would non-material climate-related targets and goals be required to be disclosed?

We note than an overly broad requirement to disclose any and all climate-related targets and goals, public or not, material or not, may have chilling effect on registrants actively setting aspirational goals for fear that public disclosure in official SEC filings may expose them to liability if the goals are not met.

For the reasons above, we respectfully suggest that the Commission should require disclosure of climate-related targets and goals that are material and that have been publicly disclosed. In our opinion, such disclosure requirement should not include internal or non-public targets and goals, nor those that are considered immaterial.

M. Experience and Responsibility of Board Members or Board Committees

The proposed rules would require a registrant to disclose a number of board governance items. Under Item 1501(a)(1)(i) and (ii) of Regulation S-K, registrants must identify any board members or board committees responsible for the oversight of climate-related risks, and whether any member of a registrant's board of directors has expertise in climate-related risks, with disclosure required in sufficient detail to fully describe the nature of the expertise.

The Commission has not defined what constitutes "experience in climate-related risks". While we agree that such a definition may prove problematic, it would be important to indicate a list of non-exclusive criteria that registrants should consider in reaching a determination on whether a director has experience in the field. These criteria could include, for example, whether the director has prior work experience in sustainability or climate-related matters, or whether the director has obtained a certification or degree in in sustainability and climate-related matters. This approach would be consistent with Item 407(j) of the recently released rule about cybersecurity (Release Nos. 33-11038; 34-94382; IC-34529; File No. S7-09-22).

Also, the recently released rule about cybersecurity (Release Nos. 33-11038; 34-94382; IC-34529; File No. S7-09-22) states that a person who is determined to have expertise in cybersecurity will not be deemed an expert for any purpose, including, without limitation, for purposes of Section 11 of the Securities Act (15 U.S.C. 77k), as a result of being designated or identified as a director with expertise in cybersecurity (Item 407(j)(2)). Such safe harbor is important to clarify that Item 407(j) would not impose on such person any duties, obligations, or liability that are greater than the duties, obligations, and liability imposed on such person as a member of the board of directors in the absence of such designation or identification. The Commission notes that such safe harbor should alleviate such concerns for cybersecurity experts considering board service.

We respectfully suggest that the Commission creates a similar safe harbor to protect the members of the board of directors or committees responsible for the oversight

of climate-related risks. It would be important to indicate a list of non-exclusive criteria that registrants should consider in reaching a determination on whether a director has experience in the field of climate-related risks. Since it is not clear what constitutes "experience in climate-related risks", we recommend that, in line with TCFD, the Commission could require board committees responsible for the oversight of climate-related risks, instead of a board member with expertise in climate-related risks.

N. Alternative Reporting Provision

The Proposed Rule does not permit a registrant that is a FPI and subject to the climate-related disclosure requirements of an alternative reporting regime that is substantially similar to the requirements of proposed Subpart 1500 of Regulation S-K and Article 14 of Regulation S-X to satisfy its disclosure obligations under those provisions by complying with the reporting requirements of an alternative reporting regime ("alternative reporting provision"). If provided, such alternative reporting provision would have the potential to reduce the compliance cost while providing useful information to investors.

For the reasons above, we respectfully suggest an alternative to satisfy the requirements of proposed Subpart 1500 of Regulation S-K and Article 14 of Regulation S-X by complying with the reporting requirements of an alternative reporting regime.

O. Transition Period for FPIs

We acknowledge and agree with the position of the Commission that climate-related risks potentially impact both domestic and foreign private issuers, regardless of the registrant's jurisdiction of origin or organization. We, however, respectfully request the Commission to consider a longer transition period for FPIs to comply with the proposed rules. Such longer transition would be consistent with historical practice of the Commission when proposing new rules to FPIs. In a number of instances, the Commission has acknowledged that the compliance burden for FPIs, when compared to domestic issuers, may be higher and more time consuming. In fact, such principle is embedded in the four months that FPIs are given every year to file their annual report. Also, foreign private issuers are subject to different rules and regulations from different jurisdictions, which may need to be reconciled with the Commission disclosure rules. As a matter of public policy, a longer transition period would also be the right incentive to continue to attract potential issuers from foreign jurisdictions to the U.S. capital markets, and investors would continue to be protected by general antifraud provisions under U.S. securities laws during the transition period.

We respectfully suggest that the Commission considers a longer transition period (e.g., a three year transition period) for FPIs consistent with historical practice of the Commission.

Conclusion

Thank you for the opportunity to offer these comments to the Proposed Rule. Please feel free to contact ABRASCA and IBRI as follows in case of any doubt regarding these comments:

Sincerely,

Associação Brasileira das Companhias Abertas – ABRASCA

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