



June 17, 2022

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

VIA Electronic Filing

Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors (S7-10-22)

Dear Chair Gensler:

The Center for American Progress is pleased to submit its comments on the Securities and Exchange Commission's (SEC or the Commission) proposed rule on "The Enhancement and Standardization of Climate-Related Disclosures for Investors" (the proposal or the proposed rule), released on March 21, 2022.

The proposed rule is long overdue. For well over a decade, investors have been seeking information about the climate-related risks U.S. public companies face, and this proposed rule is a major step forward for them. We applaud you and the staff of the SEC for the enormous amount of effort that it must have taken to listen to, review, and analyze the extensive comments from investors, registrants, and other market participants up to this point and to craft a rule that balances investors' overwhelming demand for climate risk information against the challenges and benefits for companies of providing this information.

Over nearly two decades, private sector companies, investors, and national and international organizations have strived to establish frameworks for disclosure of climate-related risks and the emissions that affect a company's resilience amidst increasing physical impacts of climate change and an economy transitioning to low-carbon alternatives. Yet, investors in U.S. companies still do not have what they need to make investment decisions.¹ While many of the largest registrants now make climate-related disclosures, many do not. Moreover, even those that do disclose make those disclosures in different places, including outside of filed reports, using different terminology and standards, and with different levels of assurance, if any. And most make little or no disclosures about the underlying data and methodologies used or whether and how consideration of climate-related risks are integrated into core business functions or will

¹ See, e.g., Simon Jessop, Tommy Wilkes and Elizabeth Howcroft, "Almost all climate-related corporate disclosures are inadequate, CDP says," Reuters, March 3, 2022, available at [Almost all climate-related corporate disclosures are inadequate, CDP says | Reuters](#).

impact financials. Meanwhile, many companies are making various commitments to reduce their emissions and climate risks without providing information about how they plan to meet those commitments, if at all. In short, it is nearly impossible for investors to rely on the information—which may not even be consistent from year to year within the same company—or compare it from one company to another.

The climate risk disclosure regime advanced in this proposed rule is consistent in both form and content with existing SEC rules, promulgated over many decades, that ensure registrants disclose financially relevant information investors and other market participants need to make investment decisions.² The Commission has taken care to create a framework that, if finalized, would provide investors with important information about the financial impacts on a company of, and related relevant information about, the physical and transition risks of climate change. Much of this information would be standardized to the benefit of issuers and investors alike and would be subject to audit or attestation. These are all fundamentally sound requirements and squarely within the mission of the SEC to protect investors by ensuring that they have the information needed to make investment decisions and value securities and to protect the public through ensuring fair, orderly and efficient capital markets and facilitating appropriate capital formation.

The following comments respond to specific questions posed by the Commission in the proposed rule and suggest several ways in which the Commission could strengthen the rule, enhancing standardization for both issuers and investors, and further ensuring reliability, consistency, and comparability of information for investors. On the whole, the proposed rule represents a solid foundation for disclosure of climate-related risk well within the statutory authority Congress granted to the SEC for the protection of investors or the public. By drawing from the Task Force on Climate-Related Financial Disclosures (TCFD)³ and the Greenhouse Gas Protocol⁴—frameworks and standards supported and followed by hundreds of U.S. companies—and proposing graduated compliance requirements and a safe harbor, the Commission has arguably bent over backwards to ensure that public companies are not overburdened by these critical disclosures. At the same time, although investors will have a great deal more information if the rule is finalized in its current form, they may not have all the information they will need going forward to value their investments appropriately and protect them over the near and longer term from climate-related financial risks. These comments aim to improve necessary disclosures.

Following an important comment about the Commission’s use and misuse of the concept of materiality throughout the proposal, the comments track the proposed amendments to

² George S. Georgiev, “The SEC’s Climate Disclosure Proposal: Critiquing the Critics,” Emory Legal Studies Research Paper 22-8, March 30, 2022, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4068539. For examples, see, John C. Coates, *Comment Letter*, Annex A, June 2, 2022, available at <https://www.sec.gov/comments/s7-10-22/s71022-20130026-296547.pdf>.

³ Financial Stability Board, “Task Force on Climate-Related Financial Disclosures: Overview” (Basel, Switzerland: 2020), available at [TCFD_Booklet_FNL_Digital_March-2020.pdf \(bbhub.io\)](https://www.fsb.org/wp-content/uploads/TCFD_Booklet_FNL_Digital_March-2020.pdf).

⁴ See, Greenhouse Gas Protocol, “About Us,” available at <https://ghgprotocol.org/about-us>.

Regulation S-X⁵ and Regulation S-K⁶. Page references are to the proposed rule as published in the Federal Register.

Our comments can be summarized as follows:

- The Commission's use of materiality standards throughout the proposal, while useful for some disclosures, is not required by law. The manner in which it is used could subject the rule to legal challenge, and its use would be potentially harmful to valuation of securities for certain parts of the rule, namely the S-X and Scope 3 emissions disclosures.
- The proposed amendments to Regulation S-X and S-K are well within the SEC's disclosure authority and consistent in form and content with disclosures the Commission has required registrants to make over many decades.
- Disclosure of the physical and transition-related risks that registrants face, including their level of direct and indirect emissions, is long-overdue and essential to providing investors with a complete picture of the profitability and resilience of public companies today and going forward.
- The proposed amendments to Regulation S-X would provide investors with more information about the through line from physical and transition-related climate risks to specific items on the financial statements, and as such overcome the longstanding problem of registrant climate risk disclosure that is too generic and boilerplate, or nonexistent, despite repeated efforts by the SEC to encourage more detailed information in this broad area of risk.
- The proposed amendments to Regulation S-K would provide much-needed standardization and detail about whether and how a registrant is integrating climate risk assessment and planning into its core business operations—information that a broad swath of registrants have stated that they do.
- Disclosure of the absolute number of direct and indirect emissions a registrant is responsible for is at the heart of a registrant's resilience as the economy adjusts to climate change, and the Commission has taken only a very modest step toward the emissions disclosure that ultimately will be needed for investors to make investment and voting decisions in the face of increasing climate related transition risks to companies. The Commission should sunset the safe harbor and work toward requiring all registrants to make Scope 3 disclosures. In addition, we recommend that the Commission eliminate the materiality threshold for at least some emissions disclosures, and we propose a regime for Scope 3 disclosures that focuses on the most relevant information for investors while streamlining registrant disclosures.
- Many communities of color, low-income communities, and indigenous peoples are or will be disproportionately affected by climate change and its related harms, and by the transition to a low-carbon economy. And climate change may exacerbate the impacts of pre-existing pollution from registrant operations. The Commission should require registrants to identify and disclose their operations in communities that are environmentally vulnerable, marginalized, underserved, and overburdened by pollution, as defined by the White House Council on

⁵ 17 CFR Part 210, available at <https://www.law.cornell.edu/cfr/text/17/chapter-II>.

⁶ 17 CFR Part 229, available at <https://www.law.cornell.edu/cfr/text/17/part-229>.

Environmental Quality,⁷ and disclose whether and how they engage or plan to engage with those communities and work to reduce the registrant's pollution and environmental impact on them. Registrants also should be required to disclose how they assess the presence and impact of their business activity on these communities, and on the knowledge, cultures and traditional practices of Indigenous peoples when determining the materiality or size and scope of a particular climate related risk.

The Commission's Use of Materiality

The proposed rule appears to tie disclosures repeatedly and in different ways to "materiality." But the SEC is not required to base its disclosure rules on materiality. Materiality is a concept that is used by courts in specific situations involving individual issuers and outside of the question of the SEC's authority to require disclosures, typically where the SEC has not expressly prescribed disclosure. For example, to show securities fraud by a company the omitted or false disclosure must be material, that is, it must be significant to a reasonable investor in the total mix of information about a company.⁸ In another example, a company may try to defend against a proxy proposal for expanded disclosure by asserting that the Commission does not require the disclosure (assuming this is true) and further that the information sought is not financially material.

While the Commission may choose to use a materiality threshold in drafting a disclosure rule if it so desires, we worry that by significantly relying on a materiality standard, the SEC will open itself up to litigation risk if it does not further explain that it recognizes its authority is broader than materiality and is intentionally going narrower than it can.

The Supreme Court as far back as 1943 in *SEC v. Chenery Corp.* explained that "If the [reviewed] action is based upon a determination of law as to which the reviewing authority of the courts does come into play, an order may not stand if the agency has misconceived the law."⁹ This is because "[o]ne of the basic procedural requirements of administrative rulemaking is that an agency must give adequate reasons for its decisions,"¹⁰ and that agencies may not "rel[y] on factors which Congress has not intended it to consider."¹¹ Accordingly, "[a]n agency decision cannot be sustained, however, where it is based not on the agency's own judgment but on an erroneous view of the law,"¹² and that "[w]hen agency action is based on a flawed legal premise, it may be set aside as

⁷ See White House Council on Environmental Quality, Climate and Economic Justice Screening Tool, available at <https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5>.

⁸ *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976), available at <https://www.law.cornell.edu/supremecourt/text/426/438>.

⁹ *SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943).

¹⁰ *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221, (2016).

¹¹ *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983).

¹² *Prill v. NLRB*, 755 F.2d 941, 947 (D.C. Cir. 1985). See also *Massachusetts v. EPA*, 549 U.S. 497 (2007) (setting aside the EPA's denial of a petition for rulemaking after it found EPA erroneously presuming the Clean Air Act limited its authority); and *Safe Air for Everyone v. United States EPA*, 488 F.3d 1088, 1101 (9th Cir. 2007) (overturning an EPA decision on the basis that "EPA's conclusion [was] legally erroneous.").

‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.’¹³ Furthermore, the Supreme Court has made clear that courts are to evaluate agency actions only on contemporaneous rationales.¹⁴

The law is clear that the SEC’s authority to act is much broader than requiring disclosure of material information. The SEC has authority to require any disclosures necessary to carry out its three-part mission of protecting investors; maintaining fair, orderly, and efficient capital markets; and promoting capital formation. For example, section 23 of the Securities Exchange Act provides the SEC with the “power to make such rules and regulations as may be necessary or appropriate to implement the provisions of this title,”¹⁵ and frequently states throughout that the SEC writes rules or makes determinations “in the public interest or for the protection of investors,”¹⁶ all without limiting those actions to effecting only those disclosures or registrant actions that are material.

This understanding—that the SEC is generally not bound to a materiality standard when drafting regulations—is consistent with the legislative history of the securities laws. The House Committee report for the Securities Act explained that “the Commission may ... provide by its rules and regulations for the inclusion of such additional information and documents [in registration statements] as it may deem necessary or appropriate to effectuate the purposes of the act.”¹⁷ Similarly, the Senate Committee report for the Securities Exchange Act explained that the SEC could “specify...the details to be shown in financial statements” without limiting those details to only material information.¹⁸ The legislative history makes clear that the agency may require disclosure of any underlying information necessary to ensure accurate valuation of securities.¹⁹

Accordingly, regardless of the standards it adopts throughout the rule (including a materiality standard), we recommend the SEC make clear that it recognizes its rulemaking authority does not rely on materiality and it is making its decisions with this understanding.

In addition to this overarching legal concern about the Commission’s use of materiality in the proposed rule, we make separate points about materiality in connection with specific uses of materiality in the rule. In particular, we do not think that a materiality threshold should be used for the S-X climate related financial metrics.²⁰ And we find the Commission’s use of materiality in the Scope 3 emissions section to be confusing and unworkable. Our concerns about these specific uses of materiality are described below with our other comments and recommendations in those sections.

¹³ *Regents of the Univ. of Cal. v. United States, Dept. of Homeland Sec.*, 279 F. Supp. 3d 1011, 1037 (N.D. Ca. 2018), citing *Massachusetts v. EPA*, 549 U.S. at 532; *Safe Air for Everyone v. EPA*, 488 F.3d at 1101.

¹⁴ See, e.g., *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971).

¹⁵ 15 U.S.C. § 78w(a).

¹⁶ See, e.g., 15 U.S.C. § 78e.

¹⁷ H. Rep. 73-85 at 17-18.

¹⁸ S. Rep. 73-792 at 20.

¹⁹ H. Rep. 73-85 at 3 (“[T]he items required to be disclosed...are items indispensable to any accurate judgment upon the value of the security.”)

²⁰ See Question 68 at Pg.21369.

Proposed Amendments to Regulation S-X Financial Statements (Climate-related metrics, Pg.21464)

The proposed amendments to Regulation S-X are so fundamentally sound, appropriately crafted for investors, and within the authority of the SEC as to be uncontestable. By their very nature, the amendments demonstrate why investors need this information and in what form. Integrating climate risk information into financial statements goes to the very purpose of disclosures—helping investors understand how climate-related risks impact the profitability and resilience of a company and its financial position. Moreover, including this information in notes to the financial statements provides investors with a higher level of assurance for the information, as the notes, like line items, are audited to a reasonable level of assurance and the Public Company Accounting Oversight Board (PCAOB) oversees the auditors.

The information that registrants currently provide on climate risks, if provided at all, is often generic or boilerplate and may be difficult for investors to find. While some registrants may allude to potential impacts on operations or liability, for example, rarely is it clear how the financial statements are or will be impacted, much less specific line items on the financial statements, and little if any of this information is subject to audit. Providing the through line from climate risks that are identified to the financial statements, as proposed, would give investors a much-enhanced understanding of a company's position and prospects.

We note that requiring the disclosures of Scopes 1, 2 and 3 emissions in Regulation S-X, rather than in Regulation S-K as the rule proposes, would automatically provide reasonable assurance and oversight for emissions disclosures, which are so critical to investor understanding of a company's ability to remain resilient in the transition to a low-carbon economy. At the same time, we understand there are arguments for placing this key item of disclosure in Regulation S-K. Therefore, we will make recommendations below for strengthening attestation of emissions disclosures.

In the following section, we respond to specific questions posed in the proposed rule relating to the amendments to Regulation S-X, and we recommend a few measures that could respond even better to investors' needs.

Financial impacts (Section 210.14-02(c-d)/Pg.21464):

Despite the SEC staff's 2010 guidance specifically calling out the clear lack of compliance with existing SEC rules regarding disclosure of material climate-related risk impacts in company financials and providing specific examples of how those risks could be impacting specific line items,²¹ public companies and their auditors are still massively failing to disclose climate-related risks in their financial statements.²² The shortcomings are glaring and evident across companies' reporting. Climate-related estimates and assumptions are

²¹ U.S. Securities and Exchange Commission, "Commission Guidance Regarding Disclosure Related to Climate Change," Release Nos. 33-9106 and 34-61469, February 2010, available at <https://www.sec.gov/rules/interp/2010/33-9106.pdf>.

²² Carbon Tracker Report, "Flying Blind: The glaring absence of climate risks in financial reporting," September 16, 2021, available at <https://carbontracker.org/reports/flying-blind-the-glaring-absence-of-climate-risks-in-financial-reporting/>.

not visible in existing financials; there is little evidence that auditors consider the effects of material climate-related risks or companies' climate commitments; and companies' stories across their reporting are inconsistent.²³ This inconsistency exists not just between a company's SEC reporting and the information provided to peers and the public, but also within the company's SEC reporting, such as between S-K and S-X.

Given the widespread failure of companies to report the financial impacts of climate-related risks and the rapidly growing investor demand for reliable information of this nature, the proposed amendments to S-X expressly stating that these disclosures must be included in the audited financial statements are highly appropriate, including requiring the registrant to provide contextual information such as a description of significant inputs and assumptions used and policy decisions made by the registrant to calculate the specified metrics (Q52/Pg.21364). In addition, the proposal to require disclosure for the registrant's most recently completed fiscal year and for the corresponding historical fiscal years included in the registrant's consolidated financial statements in the filing makes eminent sense and will provide investors with a better understanding of the financial impacts of the climate risks and important perspective on whether the financial impacts are changing (Q55/Pg.21364). Moreover, providing the information for all periods in the consolidated financial statements should be required even for registrants filing an initial registration statement or providing climate-related financial statement metrics disclosure for historical periods prior to the effective date or compliance date of the rules, since Rules 409 and 12b-21 relating to information that is unknown or not reasonably available provide adequate accommodation for any potential difficulties of providing the proposed disclosures in such situations (Q56/Pg.21365).

We note that some clarification may be needed in Section 210.14-02(d) at Pg.21464. This section should be focused on the impacts on the company financials of changes in technology, market forces, and other occurrences related to the transition to a low-carbon economy. The examples in subsections 1-4 indicate that is indeed what the Commission intended. However, the title of the section refers to impacts related to "transition activities" and the first sentence requires disclosure of the impact "of any efforts to reduce GHG emissions or otherwise mitigate exposure to transition risks" on any line items in the financials. The Preamble's discussion of "transition activities," moreover, is confusing (Pg.21366). As a result, Section 210.14-02(d) could be misconstrued to refer only to the financial impact of activities or efforts of the registrant—information that is covered in subsection (f) at Pg.21465—and not to the broad range of climate-related changes in technology, market forces and other occurrences instituted by entities not related to the registrant that may nonetheless impact the registrant's financials. A possible re-wording might be "(d) *Financial impacts of transition risks*. Disclose the impact of regulatory, technological, market and other changes made by persons or entities other than the registrant to reduce GHG emissions or otherwise mitigate or adapt to climate change on any relevant line items in the registrant's consolidated financial statements..."

Except for the clarification noted above, we agree that the Commission should require registrants to disclose financial metrics as proposed, including disaggregation of climate-related physical and transition risks, and that doing so would provide investors with information relevant to the valuation of securities (Q59-60/Pg.21368). At the same time, there is no reason to limit climate risk disclosures to a specified set of severe weather

²³ Id.

events or items, as that would reduce the ability of investors to compare companies that face significant though different climate risks where one fell under the list and the other did not (Q61/Pgs.21368-9).

Responding to Question 65 (Pg.21369), we approve of the approach of aggregating the absolute value of negative and positive impacts of all climate-related events and separately transition activities for purposes of determining whether the one percent disclosure threshold is met, with the clarification that, once the one percent threshold is met, the registrant is then required to disclose the disaggregated negative physical and transition risk impacts and separately the positive impacts of opportunities. We strongly oppose the offsetting or netting of positive and negative impacts, as described in Question 67 (Pg.21369). Moreover, use of a materiality threshold for the S-X disclosures, either in lieu of the one percent threshold or in combination with it, would be confusing and would not provide investors with as decision-useful information as a quantitative threshold by itself (Q68/Pg.21369).

Expenditures (Section 210.14-02(e-f)/Pg.21465):

What a company is spending to address impacts of climate change on its facilities and capital costs it incurs associated with mitigating physical risks or adjusting to the transitioning economy are essential pieces of the financial puzzle when it comes to climate-related risks companies face and their impact on the firm's financial condition. Information about expenditures also can provide substance to companies' net zero and other climate-related targets and claims.

Subsections (e) and (f) at Pg.21465 follow logically from subsections (c) and (d), with the caveat that the distinction between subsections (d) and (f) would be much clearer with the clarification recommended above. The clarification would ensure that the expenditure metrics would not overlap with the financial impact metrics (Q73/Pg.21371).

Except as specified in the preceding paragraph, we strongly support all of the features of the expenditure disclosures, as proposed (Qs74-80/Pg.21371). We would add that the decision to capitalize versus expense costs may, though not always, say something about the timing of or commitment to activities aimed at reducing physical or transition risks (Q75/Pg.21371).

Estimates and assumptions (Section 210.14-02(g-h)/Pg.21465):

We support the proposed amendments relating to estimates and assumptions, as proposed (Qs81-85/Pg.21372-3). Many line items of the financial statements are affected by the underlying estimates and assumptions on which the consolidated financial statements are based. Climate-related physical events and transition activities, such as the switch to renewable energy or changes in consumer purchasing behavior, can affect those assumptions and estimates and, in turn, the financial statements.²⁴ As stated by Samantha Ross, former special counsel at the U.S. Securities and Exchange Commission and a former chief of staff and special counsel at the Public Company Accounting Oversight Board, there

²⁴ Samantha Ross, "The Role of Accounting and Auditing in Addressing Climate Change," Center for American Progress (Washington, DC; 2021), available at <https://www.americanprogress.org/article/role-accounting-auditing-addressing-climate-change/>.

may be “extreme uncertainty about the path of the transition, but there should be no uncertainty about the basis of management’s estimates that form a company’s accounting...”²⁵ Yet, only a small percentage of U.S. GAAP-reporting registrants in the most climate-impacted industry sectors disclose the effect of climate risk on their estimates and assumptions.²⁶

We also encourage the Commission to require registrants to disclose changes in estimates, assumptions, or methodology among fiscal years for the proposed financial statement metrics, as more clarity is needed on this point and existing required disclosures may not already elicit such information (Q86/Pg.21373).

Inclusion of climate-related metrics in the financial statements (Section 210.14-02(a)/Pg.21464):

As stated above, requiring the financial statement metrics to be disclosed in a note to the registrant’s audited financial statements would greatly improve the extent to which investors could rely on climate risk disclosures and understand how climate risks are impacting companies’ financials. We do not believe that this information should be disclosed in a separate schedule to the financial statements (Q87/Pg.21373) or in a new financial statement (Q88/Pg.21373) or outside of the financials (Q89/Pg.21373). Any of these alternatives would thwart investors’ ability to discern how climate risks impact company financials and could cause confusion or misunderstanding on investors’ part about how the information would be integrated into the financials.

The Commission raises an important question with respect to auditing of the proposed financial statement metrics when financial reports are prepared in accordance with IFRS as issued by the IASB (Q92/Pg.21373). It is critical that the Commission ensure that the newly proposed disclosures are audited even when they come from foreign issuers, including amendment of Form 20-F and other forms to clarify that the scope of the audit must include any notes prepared pursuant to Article 14 of Regulation S-X. Doing so would further the SEC’s critical mission of ensuring that the same standards of reliability are being applied across companies and that financials are comparable as they relate to climate risk impacts.

Proposed Amendments to Regulation S-K Qualitative Disclosures (Climate-Related Disclosure, Pg.21465)

The proposed amendments to Regulation S-K are essential for investors: The disclosure of greenhouse gas emissions associated with a registrant’s operations, energy purchases, and value chain lie at the heart of a company’s ability to cope with the transition to a low-carbon economy—a transition that is already happening, rapidly—especially when that emissions disclosure is accompanied by information from the company about how it is integrating assessment and planning for climate-related physical and transition risks into its core business functions.

²⁵ Id.

²⁶ CarbonTracker, “Flying blind: The glaring absence of climate risks in financial reporting,” September 16, 2021, available at <https://carbontracker.org/flying-blind-pr/>.

Climate risks are no different from many other risks that a company faces, with attendant discrete impacts on its financials. As markets change and adapt to the impacts of climate change, for example, a registrant's high emissions may be just as risky as its high degree of leverage. Moreover, climate risks interact with and potentially exacerbate many of the risks that registrants have been disclosing for decades. A company that depends on a single or small number of products, suppliers, customers, manufacturers, or markets may have a greater risk of disruption if its Scope 3 emissions are high. A company that fails to plan for obsolescence of energy-intensive machinery will not be able to compete when new energy-efficient machinery becomes available. A registrant with high direct or indirect emissions may have more difficulty securing business loans from financial institutions seeking to reduce climate risk in their portfolios.

As the Commission makes clear throughout the Preamble and alludes to through numerous examples in the proposed amendments, climate-related risks can affect a company's operations and financials in a wide range of ways, including revenues, the useful life of assets, loan qualification, and insurance costs. With the acceleration of climate risks, both physical and transition-related, investors understandably are concerned about the impact on profitability and resilience of companies in both the near and longer term, and they want to be able to balance these risks according to their own investment goals and risk appetite.

Integration into core business functions of assessment of and planning around climate risks, for which the Task Force on Climate-related Financial Disclosures (TCFD) provides a detailed framework, is now so widely accepted in the U.S. and globally that investors look for it when considering investments in companies. Developed with and by large issuers, its focus on governance, strategy, risk management, and metrics and targets provides a standardized means for investors to compare companies' processes and planning around current and anticipated climate-related physical and transition risks. The Commission appropriately included a version of the TCFD-type disclosure framework in its proposed rule and as part of S-K. At the same time, it appropriately recognized that the narrative disclosures called for in the TCFD framework must be accompanied by the financial impact metrics called for in the proposed rule amendments to S-X and by disclosure of a company's direct and indirect emissions. The latter provide investors with an understanding of the purpose and effectiveness of a firm's TCFD-type disclosures and whether the company's results today will be repeated in succeeding years.

We are broadly supportive of the approach that the Commission has taken in its proposed amendments to Regulation S-K but respectfully suggest improvements that could be implemented in the final rule, particularly with respect to emissions disclosure, that would aid investors.

Governance (Section 229.1501/Pg.21467):

Whether a company's board and management take climate risks seriously is fundamentally important to investors, and CAP supports the inclusion of the proposed governance amendments to S-K. Engagement of a firm's board and management on an issue is an indication that the company has elevated management of climate risk to those with authority to ensure that the company monitors this risk, develops strategies to address it, and devotes necessary resources toward its climate risk goals.

Strategy, Business Model, and Outlook (Section 229.1502/Pg.21467):

We support the Commission’s modifications of this aspect of the TCFD framework. Investors want to know not only what board and management’s strategy is surrounding climate risk, but also how dependent the company’s business model is on its level of greenhouse gas emissions and what the company’s outlook is based on that information.

This section of the proposed S-K amendments would provide a thorough foundation for disclosure of climate risks, including future risks that arise or are identified. It provides issuers with flexibility in their disclosures, while setting up a structure for amending the rules to include specific risks that arise in the future and are of significance to investors broadly.

At the same time, we encourage the Commission in the final rule to provide a non-exclusive list of examples of transition risks, similar to what it has done with respect to physical risks. The list of examples should illustrate the breadth of transition-related risks that should be considered.

An emerging climate-related transition risk that the Commission may wish to specifically identify relates to the mining of crypto currencies, which places a heavy burden on energy systems and, depending upon the form of energy used, could significantly increase a company’s emissions and, in turn, its exposure to transition risks.

As another example, many communities of color, low-income communities, and indigenous peoples are or will be disproportionately affected by climate change and its related harms and by the transition to a low-carbon economy. Climate change may also exacerbate the community impacts of pre-existing pollution around registrants’ operations. For registrants with operations close to these communities, this can pose reputation and litigation risks.²⁷ We strongly urge the Commission to specifically require registrants to identify and disclose their operations in communities that are environmentally vulnerable, marginalized, underserved, and overburdened by pollution,

²⁷ See, e.g., “The New Coal: Plastics and Climate Change,” Beyond Plastics, October 2021, available at <https://www.beyondplastics.org/plastics-and-climate>. (“The health impacts of these emissions are disproportionately borne by low-income communities and communities of color, making this a major environmental justice issue.”); Paloma Esquivel, “15 years after ‘Erin Brockovich,’ town still fearful of polluted water,” Los Angeles Times, April 12, 2015, available at <https://www.latimes.com/local/california/la-me-hinkley-20150413-story.html>; “Case Summary – Anne Anderson et al. v. W.R. Grace & Co. et al.,” Science Education Resource Center, Carlton College, available at https://serc.carleton.edu/woburn/Case_summary.html; and “Path of Toxic Pollution: How Making ‘Forever Chemicals’ for Food Packaging Threatens People and the Climate,” Sabin Center for Climate Change Law, Columbia Law School, available at <https://climateattribution.org/resources/path-of-toxic-pollution-how-making-forever-chemicals-for-food-packaging-threatens-people-and-the-climate/>. We also note that local jurisdictions may pass laws focusing on the disproportionate impact of emissions on certain communities. See, e.g., Hillary Aidun, Julia Li, and Antonia Pereira, “The Climate Leadership and Community Protection Act’s Environmental Justice Promise,” Sabin Center for Climate Change Law, Columbia Law School, April 2021, available at <https://climate.law.columbia.edu/sites/default/files/content/CLCPA%20EJ%20White%20Paper%204.8.21.pdf>.

as defined by the White House Council on Environmental Quality,²⁸ and disclose whether and how the registrant engages or plans to engage with those communities and work to reduce the registrant's pollution and environmental impact on them. Registrants also should be required to disclose how the company assesses the presence and impact of their business activity on these communities, and on the knowledge, cultures and traditional practices of Indigenous peoples when determining the materiality or size and scope of a particular climate related risk.

The above examples and others could be added to Section 229.1502(a)(1)(ii) (Pg.21467).

Finally, the section requiring disclosure of analytical tools used by the issuer to assess climate-related risks may be too open-ended. In addition to any other analytical tools registrants use, the Commission should consider specifically requiring registrants to compare their adaptation to physical climate risks under different representative concentration pathways (RCPs),²⁹ which present possible future atmospheric concentrations of GHG emissions. The Intergovernmental Panel on Climate Change (IPCC) uses RCPs to model and research climate change. The Commission could require registrants to compare their adaptation to physical risks under RCP 8.5 or RCP 4.5 to RCP 1.9. In addition, the SEC should specify that these comparisons be made over one decade and separately the next three decades. This could provide investors with more comparability of information with respect to companies' adaptation to the physical risks of climate change.

Risk Management (Section 229.1503/Pg.21468):

Generally, the standardization of risk management disclosure is positive and aligns well with the TCFD, which many large issuers already follow or are familiar with. Disclosure of processes for identifying and prioritizing climate risks, as well as description of any transition plan, could provide useful information alongside emission disclosures and provide a more complete picture of the company's resilience and its potential to remain profitable.

GHG Emissions Metrics (Section 229.1504/Pg.21468):

The Commission has very wisely recognized that information about a registrant's GHG emissions is important for valuing securities and thus critical for investors to know. There are many ways that emissions disclosures would both complement and add to the disclosure of climate-related physical and transition risks called for in the proposed rule. All of the reasons cited by the Commission in the first paragraph of the overview of this section of the Preamble (Pgs.21373-4), as well as in the ensuing discussion (including Pgs.21376-77), and other reasons explained below justify the inclusion of this important disclosure.

²⁸ See White House Council on Environmental Quality, Climate and Economic Justice Screening Tool, available at <https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5>.

²⁹ See, Intergovernmental Panel on Climate Change, Data Distribution Centre, Glossary, "Representative Concentration Pathways (RCPs)", available at https://www.ipcc-data.org/guidelines/pages/glossary/glossary_r.html.

Even if finalized in its current form, the GHG emissions metrics articulated in the proposed rule would provide significant and sorely needed standardization of emissions disclosures, as well as increased transparency around the data, methodologies, and assumptions used in calculating emissions. Currently, many companies employ third-party consultants to calculate emissions and their data and methodologies are considered proprietary. The Commission should make the final rule abundantly clear that use of a consultant to calculate emissions does not absolve the issuer of disclosing data, methodologies and assumptions used to calculate those emissions. This is not clear in proposed Section 229.1504(e) at Pg.21469. Over time, the increased transparency afforded by the rule should contribute to improved data and methodologies for all companies and enable more efficient calculation of emissions.

The Commission's proposal to require registrants to disclose GHG emissions both in the aggregate, per scope, and on a disaggregated basis for each type of greenhouse gas is highly appropriate and completely consistent with investors' understanding of how a firm's operations and financials will fare in the face of myriad changes in the transition to a low-carbon economy, some of which may focus on specific greenhouse gases while others may affect total greenhouse gases. (Q94/Pg.21381)

The Commission's disclosure regime for GHG emissions has many positive features for investors, especially investors in companies with high Scope 1 and 2 emissions and low Scope 3 emissions. But investors may not know which companies those are because the disclosure regime is weaker with respect to Scope 3 emissions. It misses an opportunity to provide better decision-useful Scope 3 emissions information for investors at relatively low cost to issuers.

The proposed disclosure regime for Scope 1 and 2 emissions—those from operation of the firm's facilities and from purchased energy—is strong. It eventually applies to all issuers, large and small, and is not qualified by materiality or any other disclosure threshold. This is an appropriate way to handle emissions, including certain Scope 3 emissions, since the rapidly changing nature of transition activities in the marketplace and larger economy can have unanticipated and sudden financial impacts, even on companies with low emissions. Investors view emissions as an inherently quantifiable indicator of a company's exposure to the transition risks associated with climate change, such as changes in consumer purchasing behavior, adoption by competitors of newer low-emission alternatives, and changes in supply chains as suppliers adapt. However, this very fact highlights why, without full disclosure of emissions—including Scope 3 emissions—investors seeking to manage climate risk in their portfolios may still be left in the dark. They cannot obtain a complete picture of a company's exposure to climate-related transition risks.

Simply put, investors need to understand a company's full emissions profile in order to know how dependent the firm's business model is on the existing level of emissions and whether the current year's financials will be repeatable going forward.

Scope 3 Comments and Recommended Adjustments to Disclosure Regime

As the Commission has noted in its proposed rule (Pgs.21376 and 21378), for many companies, such as financial institutions or oil and gas companies, Scope 3 emissions make up the bulk of their total emissions.³⁰ Often these companies claim that they are reducing their emissions but do not report their emissions, let alone audit them.³¹ Others offload high-emission assets to companies that are not subject to U.S. public company regulations, such as private companies or non-U.S. companies.³² For this reason, we support Section 229.1504(e)(8), which requires registrants to include GHG emissions from outsourced activities that it previously conducted as part of its own operations (Pg.21469)

The materiality threshold (discussed below), which leaves Scope 3 emissions disclosure up to the issuer in the first instance, and the safe harbor provision of the Scope 3 disclosure regime, as well as the complete exemption for small businesses, could prevent investors from obtaining important Scope 3 emissions information at all, making them unable to assess the company's value as the economy transitions. With regard to small issuers, we note that many large companies obtain inputs from a large number of small companies, so leaving out small companies could hamper larger firms from accurately assessing their Scope 3 emissions. This, in turn, could lead to hidden risk for the investor. This is certainly the case with some financial institutions, whose customers may consist mainly of smaller companies. As the Commission points out, while registrants may need to use industry- and national-average data to calculate Scope 3 emissions, information directly from the sources would better help investors understand the risk exposure posed in the registrant's value chain. (Pgs.21380-81). At a minimum, the final rule should establish a date in the future, such as fiscal year 2026 (filed in 2027), when small companies would be required to begin reporting Scope 3 emissions.

Regarding the use of materiality for Scope 3 emissions disclosures, we note that the proposed rule requires disclosure of Scope 1 and 2 emissions without qualification, while Scope 3 emissions need only be disclosed "if material" (or if the registrant has made a commitment to reduce its Scope 3 emissions). This use of the materiality standard seems confusing and inappropriate. As with Scope 1 and 2 emissions, Scope 3 emissions—to the extent they can be determined through direct data or estimates (e.g., by industry

³⁰ Scope 3 emissions-heavy companies are not found solely in the oil and gas industry but include companies in a number of other industries, as well. See, e.g., Institute for Agriculture * Trade Policy, "Emissions impossible," July 18, 2018, available at <https://www.iatp.org/emissions-impossible> (relating to Scope 3 emissions of companies in the meat and dairy industries).

³¹ See, e.g., Reuters, "Banks undermine their 'net zero' pledges through lobbying – report," March 24, 2022, available at https://www.reuters.com/business/sustainable-business/banks-undermine-their-net-zero-pledges-through-lobbying-report-2022-03-25/?mkt_tok=ODUwLVRBQS01MTEAAAGDb3JegKJeNGvC0op09nmIK-MQ4qLM6oZX00cj68tmhOg4tGru3JTZcYPi-V8ZEgLhDW2-tFZbAZSQghB71BE2E6hM2z9hqgg2bw5OluM_MEop; and Dr. Steve Suppan, "Q&A: The SEC's proposed rule on the disclosure of climate-related financial risk," IATP, April 18, 2022, available at <https://www.iatp.org/blog/202204/qa-secs-proposed-rule-disclosure-climate-related-financial-risk>.

³² Hiroko Tabushi, "Oil Giants Sell Dirty Wells to Buyers With Looser Climate Goals, Study Finds," *The New York Times*, May 10, 2022, available at <https://www.nytimes.com/2022/05/10/climate/oilfield-sales-pollution.html>.

averages)—should be disclosed regardless of how much or how low they are. Whether high or low, these emissions are just as relevant to valuation of securities as Scope 1 and 2 emissions. Moreover, leaving the disclosure up to the registrant in the first instance and later to the courts will delay the disclosure of this critical information to investors.

The proposed rule points out the challenges today of obtaining or estimating Scope 3 emissions, but the materiality standard it applies does not solve that problem. Indeed, it could make it worse, as jurisprudence is unlikely to keep up with the state of data and technology in this field and could interfere with innovation in the marketplace. The SEC should instead require accurate Scope 3 emissions disclosure where it is most important to investors *and* where precise calculations are possible; industry averages where good data is available; and more flexible estimates for all other upstream and downstream emissions. This approach is described in more detail below. There is no reason to apply a vague materiality standard to the entire Scope 3 emissions disclosure when the overwhelming majority of emissions risk comes from fossil fuel combustion, which can be readily calculated or estimated.

The difficulty of estimating Scope 3 emissions is overblown in many instances, and the rule should be strengthened to include mandated disclosure, with no materiality or other threshold, of these more readily calculated Scope 3 emissions. Reliable emissions coefficients for fuels are published by the Energy Information Administration and the Environmental Protection Agency; for any company that knows the quantity of fuel it buys or sells, multiplying the volumes by an emissions coefficient would be trivially easy. And, companies regularly base key internal management decisions on estimates. Transparency around margins of error, data gaps and other factors affecting the reliability of estimates are incorporated into those decisions. Many investors and other market participants are also capable of balancing these considerations, if given the information, and should have the opportunity to do so. It cannot be an answer to say that no disclosure will be required whenever significant estimation is required. Disclosure rules should not be weakened simply because of data uncertainty; otherwise, a large number of disclosures would be entirely voluntary.

The Commission should consider segmenting Scope 3 emissions disclosure requirements based on whether the emissions are upstream or downstream and how directly they are associated with the company's products.

The segment most significant and relevant to climate related transition risk—and therefore of high concern to investors—is downstream emissions from products, that is, emissions that would directly result from the intended use of any products sold in a given period by the registrant over the average useful life of the product. Emissions in this category nearly encompass the entirety of a company's demand-side transition risks. This category would include, for example, emissions from the anticipated combustion of any finished petroleum products sold, the average lifetime emissions of any internal combustion engine vehicle sold, and the average hydrofluorocarbon (HFC) releases of any refrigerants sold. This category is analogous to the direct emissions from a registrant's activities (scope 1), but applies to direct emissions from the end-use of the registrant's products.

Fortunately, data on these emissions is readily available and easy to calculate. The Commission could specify that registrants should use the same methodologies already

used to report “supplied emissions” through the EPA’s Greenhouse Gas Reporting Program for covered facilities, where applicable. We believe that disclosure of this segment of Scope 3 emissions should not be subject to a materiality threshold but instead, like Scope 1 and 2 emissions, be mandated, eventually for all reporting companies.

The Commission could segment Scope 3 upstream emissions in a similar manner. For example, all registrants should be required to disclose an estimate of the greenhouse gas emissions from the production of purchased or acquired fuel that is consumed by operations owned or controlled by a registrant. This is directly analogous to the reporting proposed under Scope 2 for ‘greenhouse gas emissions from the generation of purchased or acquired electricity, steam heat, or cooling that is consumed by operations owned and controlled by a registrant.’ Fuel is defined by the Energy Information Administration as “[a]ny material substance that can be consumed to supply heat or power,” which includes “petroleum, coal, and natural gas (the fossil fuels), and other consumable materials, such as uranium, biomass, and hydrogen.” This category would ensure that investors have the same information about emissions from the production of fuels that the Commission has proposed to require from the production of electricity (Scope 2). No materiality threshold is appropriate here either as these can be readily estimated from industry averages.

The Commission could leave its proposed Scope 3 disclosure regime unchanged for all remaining segments of emissions, both upstream and downstream. If the Commission wished to eliminate the unhelpful materiality threshold for these Scope 3 emissions, it could instead encourage estimates that rely on broad industry-wide or in some cases economy-wide benchmarks for these disclosures, while also retaining the special safe harbor.

We believe these adjustments to the Scope 3 reporting regime proposed by the Commission would aid further standardization of estimation methodologies and improve the comparability and quality of information provided to investors. Importantly, this approach would focus Scope 3 disclosures on the emissions information that is most relevant to investors.

While not all companies have high Scope 3 emissions, Scope 3 emissions disclosures clearly would be significant in the total mix of information an investor has about any company and would be relevant to the valuation of securities. Scope 3 emissions disclosure, as the Commission points out (Pg.21379), is also needed to prevent registrants from contracting out high-emissions activities in order to lower their Scope 1 and 2 emissions—a workaround that is not possible when Scope 3 emissions are disclosed.

There is a through line from a public company’s direct and indirect emissions of greenhouse gases, as well as the physical and transition risks it faces generally, to the estimates that underlie the registrant’s financial results and position. For example, as consumer demand for clean energy and competition from renewables grow, registrants with high Scope 3 emissions may face price increases or supply chain disruptions. Without disclosure of Scope 3 emissions, these potential effects on the financials remain hidden to the investor.

Despite claims of difficulty and costs surrounding indirect emissions reporting, many companies already disclose their Scope 3 emissions. And some even do so in their 10-Ks.³³ For this reason and all of the above, we urge the Commission to work toward mandatory disclosure of Scope 3 emissions for all companies.

We are concerned that the safe harbor for disclosure of Scope 3 emissions is permanent. As the Commission recognizes in its Preamble, “...methodologies pertaining to the measurement of GHG emissions, particularly Scope 3 emissions, are evolving.” (Pg.21377) Over time, more and better-quality data and methodologies for estimating Scope 3 emissions will become available, and registrants will become more adept at calculating this data point. As that occurs, the justification for a special safe harbor for Scope 3 emissions will become even weaker. It makes sense, therefore, for the final rule to include a specific date when the safe harbor will expire, perhaps in 2028 after large issuers’ Scope 3 disclosures have been subject to reasonable assurance.

We strongly support requiring registrants to exclude any use of purchased or generated offsets when disclosing its Scope 1, 2, and 3 emissions, as proposed. There should be no offsetting of any kind when disclosing absolute emissions. Any information about purchased or generated offsets should be entirely separate. (Q101/Pg.21381)

Companies that rely on natural resources, such as forests, food, and land, often have very high Scope 3 emissions and are further exposed to climate-related market (supply chain), reputation, technology, and policy and legal risks.³⁴ Tropical commodity supply chain risk alone affects companies in the following industries: food and beverage processing and production, automobile manufacturing, textiles, chemicals, pharmaceuticals, retail, food service, personal care products, print publishing, forestry, construction, energy and biofuels, and finance. Roughly 60 percent of the GHG emissions generated from tropical deforestation take place in just two countries, making this risk exceedingly concentrated. Yet, investors often have no way of knowing about, understanding, or mitigating climate-related risks from forest, food, and land resources, especially when the resources come from other countries. And companies are not integrating these climate risks into their core business functions.³⁵ We strongly recommend that the Commission expressly require companies to include emissions from land use change in their assessment of their Scope 3 emissions. (Q104/Pg.21382).

Attestation (Section 229.1505/Pg.21469):

The Commission acted wisely in attempting to create an attestation regime for registrants’ emissions disclosures. Reliability of emissions disclosures is fundamental to investors’ ability to assess a firm’s resilience in the face of climate-related transition risks, compare

³³ These include Allbirds, Etsy, United Airlines, and Weyerhaeuser. See, Nick Mazing and Steve Soter, “Scope 3 in 10-Ks: 4 Companies That Have Been There, Done That,” Workiva, April 12, 2022, available at <https://www.workiva.com/blog/scope-3-10-ks-4-companies-have-been-there-done>.

³⁴ Climate Advisers, “Climate-Related Forest, Food, and Land Disclosures,” March 24, 2022.

³⁵ See, e.g., Orbitas, “Agriculture in the Age of Climate Transitions: Stranded Assets. Less Land. New Costs. New Opportunities.” December 3, 2020, available at <https://orbitas.finance/2020/12/03/ag-climate-transitions-risk-opportunities/>. (“Of 24 capital providers recently surveyed by Orbitax—all of whom had tropical commodity exposure—not even one had screened their loan books and/or investments for agricultural transition risks.”)

the emissions year over year to determine a company's progress toward its stated goals, and compare emissions of one company with those of another in making investment decisions.

That said, there are several ways in which the proposed rule's attestation regime could be strengthened while maintaining an appropriate balance between investor needs and issuer burdens.

As a preliminary matter, the five years allowed before an accelerated or large accelerated filer must reach reasonable assurance on Scope 1 and 2 emissions disclosures is far too long. Many of these filers already disclose or at least internally track Scope 1 and 2 emissions. Their size also means that they likely have more capacity to estimate these emissions and that their vulnerability to climate-related transition risks is potentially greater. In addition, Scope 1 emissions and even Scope 2 emissions are largely, if not entirely, within these filers' control. They should be required to provide reasonable assurance by the second year after the compliance date, or at the latest the third.

We strongly agree that, where attestation is provided by the issuer voluntarily, that attestation should be as strong as, and be subject to the same requirements as, emissions attestation that is required. We also see no reason why attestation should not be required at least for those Scope 3 emissions that are reasonably straightforward to estimate.

Much of the attestation discussion in the Preamble and the proposed amendments, Pgs.21392-21405 and Pgs.21469-21471, respectively, relates to the GHG emissions attestation provider. While we appreciate the attention Commission staff have given to the requirements surrounding the selection and qualifications of these providers, we note that some of these providers will be financial auditors and others will not, making it particularly important to monitor them for consistency of process, inputs and methods. They should be subject to the internal controls or guardrails that exist for financial auditors. Meanwhile, competition among the providers may create incentives to provide more favorable emissions assessments than warranted. We strongly recommend that the SEC work toward establishing oversight of these attestation providers in the near future. The Commission should also work toward instituting a system of penalties for false or misleading attestations.

Targets and Goals (Section 229.1506/Pg.21471):

The disclosures in this section of the proposed rule provide critical information about whether and how a company is performing on net zero commitments and other climate-related claims. Investors need this information to assess whether those commitments and claims are real. The general alignment with the SBTi's approach, the use of a baseline of emissions, and the requirement that issuers update the information annually also make this section strong.

We applaud the Commission's requirement that issuers provide detailed information about whether and how carbon offsets or Renewable Energy Credits (RECs) are used to achieve climate-related targets and goals.

Given the potential for target arbitrage,³⁶ more may be needed in future amendments to the rule to strengthen oversight. For example, the Commission could require disclosure of whether the registrant assessed the risks of potential conflicts with communities that inhabit areas of land used as offset tracts.

Some have argued that requiring disclosure of Targets and Goals and performance against those will have a chilling effect on companies—that companies may walk back previous statements about climate-related goals and targets in order to avoid having to make the disclosures called for in this section. We believe that there exist strong competitive and investor-related incentives for companies to set targets and goals. Moreover, the answer is not to dispense with disclosures and allow companies to make claims about goals that they fail to back up with action. Most companies recognize that climate change poses risks, and they want to have some sort of plan to assess and manage against that risk. Disclosures around management’s plans to address climate risks, including how management is or is not meeting the targets and goals in those plans, are essential for investors and other market participants. The existence of the disclosure regime promotes orderly and efficient capital markets by removing the penalty to firms who choose to disclose voluntarily.

Economic Analysis (Pg.21412-21452)

The Commission’s economic analysis provides a strong basis for the proposed rule in all respects and covers all of the elements called for in the SEC’s 2012 Guidance on Economic Analysis.³⁷ That analysis, we add, fits securely within the broader economic framework of the history of the securities laws and the American economy.

The economic underpinnings of the SEC’s more than 80-year legal authority to require registrants to disclose information include the bedrock principle that markets are most efficient and fair when participants have full, fair, and truthful information. Prior to the Great Depression, there was an enormous imbalance of information. Investors were lured into making investments for which they lacked adequate information to make sound decisions. Corporate elites gained economic rents even as investors—and ultimately the rest of the American public—were economically devastated.³⁸

Congress reiterated this bedrock economic foundation of the securities laws in 1975³⁹ and 1996,⁴⁰ when it sought to clarify that the SEC should remove barriers to competition and

³⁶ See, e.g., Louie Woodall, “How to tackle net-zero target arbitrage,” *Climate Risk Review*, April 14, 2022, available at [How to tackle net-zero target arbitrage - by Louie Woodall \(climateriskreview.com\)](https://www.climateriskreview.com/how-to-tackle-net-zero-target-arbitrage-by-louie-woodall).

³⁷ RSFI and OGC, “Current Guidance on Economic Analysis in SEC Rulemakings,” March 16, 2012, available at https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf.

³⁸ Cynthia A. Williams, “The Securities and Exchange Commission and Corporate Social Transparency,” *Harvard Law Review* 112 (6) (1999):1197-1311, available at <https://www.jstor.org/stable/1342384?origin=crossref&seq=1>, p.1223, and 1227.

³⁹ Securities Acts Amendments, S. 249 (94th), January 17, 1975, available at [Securities Acts Amendments \(1975; 94th Congress S. 249\) - GovTrack.us](https://www.govtrack.us/congress/bills/94/securities-acts-amendments-1975-94th-congress-s-249).

⁴⁰ 15 U.S. Code, Section 77b(b), available at <https://www.law.cornell.edu/uscode/text/15/77b>.

consider efficiency, competition, and capital formation, as well as investor protection, in its rulemaking.⁴¹

These congressionally mandated considerations—efficiency, competition, capital formation, and investor protection—would all be advanced by the current proposed climate disclosure rule and indeed would be mutually reinforcing to the great benefit of registrants, investors, other market participants, and the capital markets generally. The costs to registrants of providing information about material climate-related risks and related information must be weighed against the already present and growing dangers that, without this information, competition will not be fair between high-carbon industries and energy innovators; inefficiencies will proliferate as investors and financial institutions continue flying blind to the financial risks that climate change poses; capital formation will be distributed inefficiently, placing a drag on clean energy and related innovation; and investors, even those who thought they were investing with an eye to climate risk, will be left holding a bag of coal, rather than a sound retirement portfolio.

As with the Y2K crisis of the 1990s, the prevalence of climate-related risks and their financial impacts on virtually all businesses combined with the serious and significant consequences of not adequately taking these risks into account warrant SEC rulemaking in this area. “Almost every company will need to address this issue.”⁴² As such, it is exactly the category of financial risk around which congress granted the Commission authority to require disclosures. Standardizing climate risk disclosures would help investors make better, more informed investment decisions and would fulfill congressional intent to make the capital markets more efficient and resilient. As Samantha Ross explains, “Transparency through rigorous and reliable corporate disclosure is what will preserve the competitiveness of U.S. businesses and markets through the climate crisis and energy transition.”⁴³

We offer a few additional comments that would further strengthen the Commission’s economic analysis.

As an additional note regarding the potential burden on registrants of assessing climate-related risks, we note that the data available to ascertain physical risks is remarkably sound and readily available for registrants seeking to better identify and quantify potential climate-related impacts to their business. For example, the National Oceanic and Atmospheric Administration (NOAA), cited by the Commission in Endnote 10 (Pg.21473), provides regularly updated and detailed information on the location and threat level of a

⁴¹ See, for example, Securities Exchange Act of 1934, 15 U.S.C. Section 78c(f) on promotion of efficiency, competition, and capital formation.” Section 78c(f) reads, “Whenever...the Commission is engaged in rulemaking...and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.”

⁴² U.S. Securities and Exchange Commission, “Interpretation: Disclosure of Year 2000 Issues and Consequences by Public Companies, Investment Advisers, Investment Companies, and Municipal Securities Issuers: Release Nos. 33-7558; 34-40277,” available at <https://www.sec.gov/rules/interp/33-7558.htm>.

⁴³ Samantha Ross, “The Role of Accounting and Auditing in Addressing Climate Change,” Center for American Progress (Washington, DC; 2021), available at <https://www.americanprogress.org/article/role-accounting-auditing-addressing-climate-change/>.

wide range of weather and climate-related events with damage of \$1 billion or more, mapping each across the U.S. by county.⁴⁴ As the analysis notes, the data include weather and climate-related events, as “climate change is supercharging the increasing frequency and intensity of certain types of extreme weather...”,⁴⁵ and the data includes future risk assessments.

Regarding investor burdens, it is critical to identify and take into consideration the many costs that investors, shareholders, and other market participants bear under the current spotty and inconsistent state of climate risk disclosure. For example, rather than being able to find valuable disclosures on climate risk in one place in each registrant’s SEC filings as the rule proposes, investors and other market participants seeking climate risk information would be forced to seek this information independently for each company—information that may exist in a variety of places, such as company literature, media reports, and third-party analyses, or may not exist at all. Multiplying those difficulties over thousands of registrants and millions of potential investors makes it abundantly clear that lack of standardized climate risk disclosure, including emissions disclosure that is so critical to assessing transition risk, is supremely inefficient for investors and the markets overall.

Conclusion

We wish to thank the Commission for the extensive effort it has made to gather and analyze public comments on the need for enhanced disclosures of the climate related risks that companies face. This information is essential to the valuation of securities by investors and other market participants, squarely within the Commission’s authority to require, and long overdue. We encourage the Commission to move ahead expeditiously to review comments and finalize the rule, for the protection of investors, efficiency of the markets, and improvement of capital formation.

Sincerely,

Center for American Progress

⁴⁴ See, e.g., Adam B. Smith, “2021 U.S. billion-dollar weather and climate disasters in historical context,” NOAA, March 17, 2022, available at <https://www.climate.gov/news-features/blogs/beyond-data/2021-us-billion-dollar-weather-and-climate-disasters-historical#:~:text=From%201980%2D2000%2C%20about%2075,trillion%20out%20of%20%242.5%20trillion>.

⁴⁵ Id. See, also, County Risk Assessment, NOAA National Centers for Environmental Information (NCEI) U.S. Billion-Dollar Weather and Climate Disasters (2022), available at <https://www.ncei.noaa.gov/access/monitoring/billions/mapping>.