

Draft as of September 14, 2022
To be discussed at the September 21, 2022 meeting of the Investor Advisory Committee

**Recommendation of the SEC Investor Advisory Committee Related to
Climate-Related Disclosure Rule Proposals**

The Investor Advisory Committee (“IAC”) submits the following recommendation in response to the U.S. Securities and Exchange Commission’s (“SEC” or “Commission”) proposed series of rule changes, The Enhancement and Standardization of Climate-Related Disclosures for Investors” (Release Nos. 33-11042; 34-94478, the “Proposal”)¹. The Proposal is a series of amendments that would modify the regulations under the Securities Act of 1933 and Securities Exchange Act of 1934 by requiring registrants to include certain climate-related information in their registration statements and reports such as on Form 10-K. The IAC offers its recommendation following a panel discussion regarding this topic at its June 9, 2022, public meeting².

The Proposal is focused on improving climate related disclosures related to:

- the risk of material impacts on the business related to climate change
- the governance of those risks
- the registrant’s greenhouse gas emissions
- climate-related financial statement metrics
- information about climate-related targets and goals, if they exist.

The purpose of this Recommendation is to offer the IAC’s support for the Proposal generally as well as for specific noteworthy aspects, and to offer some suggestions for enhancement of the Proposal (and underlying rule changes) before final implementation. As representatives of the investor community, we are confident investors will benefit from more consistent, comprehensive and easily located disclosures from registrants on these topics. We believe the proposed amendments will improve the disclosure framework related to climate-change and commend the SEC for identifying ways to better serve investors in line with core mission.³

¹ The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 FR 29059 (May 12, 2022), <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>. Also see U.S. Securities and Exchange Commission, “Fact Sheet: Enhancement and Standardization of Climate-Related Disclosures” (March 21, 2022), <https://www.sec.gov/files/33-11042-fact-sheet.pdf>.

² See U.S. Securities and Exchange Commission Investor Advisory Committee Meeting Agenda (June 9, 2022), <https://www.sec.gov/spotlight/investor-advisory-committee/iac060922-agenda.htm> and Webcast Archive - Part 2 (June 9, 2022), <https://www.youtube.com/watch?v=IVHNai8zmZU>. The panel featured the following panelists: Jonathan Baily, Head of ESG Investing, Neuberger Berman; Prof. Shivaram Rajgopal, Roy Bernard Kester and Y.W. Byrnes Professor of Accounting and Auditing, Columbia Business School; Samantha Ross, Founder, AssuranceMark, the Investors’ Consortium for Assurance; and Prof. Cynthia Williams, Professor of Law and Osler Chair in Business Law, York University.

³ <https://www.sec.gov/about.shtml>

Background

Climate-change risks already exist and appear to be growing over time. Public companies are no exception to this and investors in public companies have a need to understand these risks and incorporate them into their overall investment framework to improve outcomes and reduce undisclosed and underappreciated threats in their portfolios. Enhancing the required disclosure of relevant information that is important to investors not only gives investors information they need about an individual company, but it improves decision making by enhancing the ability to compare risks across different registrants.

It is also the case that the scale and multi-faceted nature of these risks mean that a variety of data is required by investors to make the type of assessment that is needed. Such analysis is proving difficult with the data available under the current disclosure regime. For example:

- Comparing climate-related risks across an industry is currently difficult given the non-standard level of disclosure investors receive from companies. This makes it difficult to do relative comparisons of risk and return across companies, which is a common goal of investors looking to evaluate opportunities.
- Today it is difficult for investors to assess a registrant's risk management process to contain climate-related risks as such information is not currently required to be disclosed. Understanding the ability of a company to identify and manage risk is an important aspect of assessing the overall attractiveness of a potential investment.
- Companies that try to distinguish themselves by releasing a public transition plan often are not required to provide updates as to how they are progressing against those targets, significantly limiting an investor's ability to assess management's success in reaching their goals.
- Investors currently struggle to understand differences in underlying assumptions used by registrants to create climate risk assessments.

The Proposal does an excellent job of discussing investor needs and challenges in the introductory section of its rule change proposal (pages 7-15), and we commend the Commission staff for their work to understand investor needs. The Proposal also addresses recommendations made in 2020 by the Investor Advisory Committee⁴ that encouraged the SEC to take action to ensure investors have the

⁴ Recommendation from the Investor-as-Owner Subcommittee of the SEC Investor Advisory Committee Relating to ESG Disclosure (May 14, 2020) ("IAC Recommendation"), available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-of-the-investor-as-owner-subcommittee-on-esg-disclosure.pdf>

material, comparable, consistent information about climate and other ESG matters that they need to make investment and voting decisions.

Key Aspects of the Proposal

Beyond providing broad support for the rule change Proposal, we would like to highlight aspects of the Proposal we find particularly important and consequential in helping investors assess climate risk in a more systematic and consistent manner. We recognize a number of these proposed rule changes have been criticized by various constituencies, but we believe they are both reasonable and serve important investor needs.

- **Use of Existing Frameworks & Protocols - Sections 1(c)1, 1(d)1, 1(d)2**

We support the fact that the Proposal draws from existing investor initiatives to report climate change risks (as outlined in section 1(c)(1) of the Proposal) and are pleased to see the use of the reporting framework of the Task Force on Climate-related Financial Disclosure (TCFD) and the Green House Gas (GHG) Protocol (discussed in Sections 1(d)(1) and 1(d)(2)). These disclosure frameworks and protocols are widely recognized globally and familiar to investors, and the use of them will make the transition for both registrants and investors easier and allow them to leverage tools and services that have already been created.

- **Required Disclosure of GHG Emissions – Section 1(e)1, Section 2(g)**

We support requiring all registrants to disclose Scope 1 and Scope 2 GHG emissions as this data is important in helping investors understand the company's business model and the risks posed by climate change. It also helps investors monitor trends in the way the company is operating over time.

We also support the Proposal to have large companies disclose Scope 3 GHG emissions if they are deemed material using existing materiality standards. 90% of institutional investors commenting on Scope 3 in a response to the Proposal supported disclosing Scope 3 information. Without this aspect of the Proposal, critical data needed to evaluate climate and operational risks for a company whose business is, for example, focused on energy production would not be available to investors. A company's mix of Scope 1, Scope 2 and Scope 3 GHG emissions can vary significantly based on its operating model, and we believe Scope 3 emissions data is a necessary supplement to Scope 1 and Scope 2 emissions data. We recognize the concerns that some have raised about the implementation costs of these proposed rules but believe that registrants have rapidly increasing access to a growing community of both experts and tools that will allow this to be done very cost effectively. Moreover, given evolving methodologies relating to Scope 3 emissions data, we support applying a safe harbor to this disclosure.

- **Requiring the use of Attestation for Scope 1 & 2 Emissions Disclosure – Section 1(e)3, Section 2(h)**

We support the requirement that accelerated and large accelerated filers include an attestation report at the reasonable assurance level for Scope 1 and Scope 2 emissions. We also support the idea that assurance providers be required to disclose their qualifications. We note that not only does the requirement of assurance improve the quality of the data being provided to investors but expect that management teams will become savvier over time in dealing with these risks by working with these types of experts.

- **Requiring the Disclosure of Climate-Related Risks and Climate-Related impacts on Business Strategy, Model and Outlook– Sections 2(b) and 2(c)**

We support the required disclosure of climate-related risks, including data to help investors understand physical risk of harm and the risks associated with the transition to a less carbon-intensive economy. This data is critical if investors are to fully analyze the risks they are taking.

The assessment of these risks requires management to make a significant number of assumptions and potentially engage a variety of analytical techniques to try to create metrics that have value to investors. Given the nature of making these estimates, we support the requirement of additional disclosures:

- Disclosure of Scenario Analysis, if used – Section 2(c)4
This includes requiring companies to provide the specific scenarios used to help them assess the resilience of their business strategy as well as the parameters, assumptions, analytical choices, and projected financial impacts that stem from various scenarios.
- Disclosure of Carbon Offsets or Renewable Energy Credits, if used - Section 2(c)2
We support requiring companies to disclose the role that carbon offsets or renewable energy credits play in their climate-related business strategy or if the company used them to meet targets or goals.
- Disclosure of Maintained Internal Carbon Price, if used - Section 2(c)3
We support requiring a company that maintains an internal carbon price to disclose information about the carbon price. Information about internal carbon prices can help investors better understand the company’s climate-related strategy.

- **Requiring the disclosure of How Risks are Managed – Section 2(e)**

It is not sufficient to provide investors with the data to help them understand climate-related risks – it is also necessary to have issuers provide investors with information on how those risks are managed. We support the proposal to have companies provide this information to investors, including:

- Disclosure of Processes for Identifying, Assessing and Managing Climate-Related Risks – Section 2(e)1
Investors need risk disclosures to be as comparable as possible in order to have the numbers be meaningful in making relative risk assessments. This is only achievable if investors are able to understand the process used to identify and assess these risks.
- Disclosure of Transitions Plans, if they exist – Section 2(e)2
We support requiring disclosure of transition plans and climate-related targets and goals for companies that have made public climate-related commitments. Companies with publicly stated transition plans need to provide updates to investors that allow investors to assess the pace at which the planned transition is achieved.

- **Requiring the Disclosure of Targets & Goals – Section 2(i)**

We think it is very important for companies that have set climate-related targets and goals to be required to provide detailed information about those goals and consistent updates as to progress towards those goals.

- **Requiring the Presentation of Disclosures in Financial Statements – Section 1(e)2**

We believe it is important that investors receive climate risk related disclosures in the registration statements, annual reports and financial statements. Making this information available in a predictable way that is consistent with the location of other important data helps achieve the goal of consistent dissemination of this important information.

We also support having qualitative disclosures of financial impacts and costs related to climate-related events and transition activities appear in the Management’s Discussion & Analysis (MD&A) section of annual reports.

Recommendations to Enhance the Proposal

As we have discussed, the IAC supports this Proposal and believes it serves the interests of investors. However, we think there are some opportunities to enhance the Proposal further that we want to share as part of our Recommendation.

- **Adding Requirement of a “Management Discussion of Climate-Related Risks & Opportunities”**

The Proposal requires issuers to disclose a wide array of data around climate risk that we believe will provide investors with a consistent source of data to be analyzed. However, investors would also benefit from a better understanding of the way management is thinking about the risks and opportunities presented to them by climate change. We recommend that the management team be required to provide a “Management Discussion of Climate-Related Risks and Opportunities” in the annual 10-K, similar to the requirement that exists to discuss financial results and operations. This information need not be audited or subject to internal controls over financial reporting.

This requirement would not only enhance and deepen investor understanding of management’s views but would also provide a standardized location for issuers to discuss their long-term strategy and goals in a way that would be efficient for investors to consume. For example, Microsoft is working to offset all prior carbon emissions as part of their long-term strategy. This goal would be difficult to discern from metrics alone, and any discussion of this type of strategy would not appear in a consistent way under the current disclosure rules.

- **Adding a Required Disclosure of Material Facility Locations**

Investors and investment analysts are often tasked with understanding the risk that climate change poses to physical assets that are critical to the company’s overall business model – this includes owned facilities as well as facilities used by key suppliers. We recommend the SEC require the disclosure of the locations of all material facilities i.e., geographical concentrations that pose material risks of loss. It should be noted that while this information is sometimes categorized as being sensitive from a competitive standpoint, the reality is that company

locations are generally known by the communities where they are located⁵ and this information can be gathered by investors willing to put forth the resources to gather it. The benefit of this requirement would be to present this data in a more usable and standardized way to all public investors.

Facility location data would not only improve the ability of investors to assess potential future climate risk, but it would also help assess the potential impact of natural disasters to various investments they may hold. It is common for large institutional investors to go through the process of gathering this data – providing information like this would allow more typical investors to operate within a level playing field.

- **Eliminating the Disclosure Requirement around Board Expertise - Section 2(d)1**

We support requiring registrants to disclose the Board’s process in overseeing climate-related risks. **However, we do not support the idea that registrants should be required to disclose whether any member of the board of Directors has expertise in climate-related risks.** We have two reasons for our concern. First, this aspect of the Proposal appears inconsistent with the supervisory nature of the Board’s role in providing oversight to management teams, which may be fulfilled by a Board that obtains expert advice on climate-related risks. Additionally, the Proposal does not define “climate-related expertise” in a way that would ensure consistent application of this requirement across issuers.

⁵ If a company’s facility location is of an especially sensitive nature, the rules could allow for alternative disclosures about whether the facility in the undisclosed location is subject to specific types of climate risks such as flooding, severe weather, drought, fire or similar specific risks.