



Submitted via email: rule-comments@sec.gov

April 19, 2022

Ms. Vanessa Countryman
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Proposed Rule Regarding “The Enhancement and Standardization of Climate-Related Disclosures for Investors” (File Number S7-10-22)

Dear Ms. Countryman:

The U.S. Chamber of Commerce’s (“the Chamber”) Center for Capital Markets Competitiveness (“CCMC”) strongly urges an at least 60 day extension of the public comment period on the Commission’s March 21, 2022, proposed rule to require registrants to include certain climate-related disclosures in their registration statements and periodic reports (“Proposed Rule”).¹

The Chamber has been a leader in the conversation on environmental, social, and governance (“ESG”) topics for nearly a decade, encouraging industries to disclose material information and work with investors toward standards that meet investor interests. Combating climate change requires citizens, governments, and businesses to work together. The Chamber has and continues to actively collaborate with our members and other stakeholders to promote practices, policies, and technology innovations across industry and government that address our shared climate challenges, particularly to quickly reduce greenhouse gas emissions to the lowest levels possible. The Chamber is committed to working with the Securities and Exchange Commission (“SEC” or “Commission”) to ensure that investors have access to material information related to climate change.

The Commission has provided a comment period of 60 days from publication on the SEC’s website or 30 days from publication in the *Federal Register*, whichever is longer; the Commission, however, has altered the text of the proposing release twice since publication on its website.² In light of the Chamber’s commitment to working with the SEC toward a

¹ *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (March 21, 2022), available in prepublication format at <https://www.sec.gov/rules/proposed/2022/33-11042.pdf> (hereinafter, “Proposed Rule”).

² Indeed, the version of the rule published to the SEC’s website in conjunction with its March 21, 2022 release was 510 pages in length. Shortly thereafter, the Proposed Rule was altered to 506 pages. The version published in the *Federal Register*, which formally started the SEC’s obligations under the Administrative Procedure Act,

common goal, and given changes to the text of a complex and novel Proposed Rule, we respectfully ask that the Commission extend this comment period by at least an additional 60 days to allow stakeholders to develop and provide informed feedback and data on the Proposed Rule.

The Scope of the Proposed Rule and the Topics on Which Feedback is Sought Warrant a Comment Period Extension

The Proposed Rule would mandate a number of climate-related disclosures from registrants, including those regarding: (1) climate-related risks; (2) climate-related effects on strategy, business model, and outlook; (3) board and management oversight of climate-related issues; (4) processes for identifying, assessing, and managing climate risks; (5) plans for transition; (6) financial statement metrics related to climate; (7) greenhouse gas (GHG) emissions; and (8) climate targets and goals. The Proposed Rule would also require a registrant to disclose information about its direct Greenhouse Gas (“GHG” emissions (“Scope 1” emissions) and indirect emissions from purchased electricity or other forms of energy (“Scope 2” emissions). Moreover, a registrant would be required to disclose GHG emissions from upstream and downstream activities in its value chain (“Scope 3” emissions) in certain defined circumstances or if the registrant has set a GHG emissions reduction target or goal that includes Scope 3 emissions. If adopted, the Proposed Rule would usher in a sea change of SEC reporting. Overall, the SEC estimates that the Proposed Rule would raise the cost burden associated with its related forms from a total of \$3.9 billion to \$10.2 billion – over a 2.5-fold increase.³

The text outlining the contours of this 490-page Proposed Rule includes a total of at least 771 questions to which the SEC is seeking responses from interested parties. The SEC acknowledges that it needs a vast array of data and insight from the regulated community, but we believe it has provided a limited window within which interested parties can collect and submit this information. For example, the Proposed Rule asks commenters (including registrants) to opine on the proposal’s impact on investors. The SEC asks commenters to address such issues as: (1) how investors would utilize the Proposed Rule’s disclosures to assess climate-related risk⁴; (2) how investors would use reported information to assess the physical effects and related financial impacts from climate-related events⁵; and (3) how investors would benefit from the disclosure of certain metrics regarding the physical and transition climate risks facing registrants.⁶ We believe the limited comment window that the SEC has provided is insufficient for registrants (*i.e.*, the parties who would ultimately be responsible for reporting under the Proposed Rule) to engage with investors and use their feedback to develop meaningful insights on the impacts of the Proposed Rule. Similar “data

was 490 pages. The *Federal Register* version contains novel language not included in either the 510 page or 506 page release previously published to the Commission’s website.

³ Id. at 456.

⁴ Id. at 56.

⁵ Id.

⁶ Id. at 74.

supply chain” issues exist with respect to the Chamber’s engagement with members, who will in turn be collecting, aggregating, and providing data to inform our substantive comments on the Proposed Rule. The current comment period is inadequate to complete comprehensive work, particularly with respect to the novel and uncertain impacts associated with proposed reporting requirements for “Scope 3” emissions that are beyond registrants’ immediate control.

In addition, the SEC asks commenters to address and assess the impacts of proposed processes the agency acknowledges would be burdensome for registrants. For example, the Proposed Rule would require registrants to describe any analytical tools, such as “scenario analysis,” that the registrant uses to assess the impact of climate-related risks on its business and consolidated financial statements, or to support the resilience of its strategy and business model in light of foreseeable climate-related risks.⁷ The SEC concedes that not every registrant conducts scenario analysis and that, in certain instances, it may be “costly or difficult” for some registrants to conduct such scenario analysis.⁸ Despite this acknowledgment, the Proposed Rule asks commenters to address whether registrants should be required to conduct and provide disclosure of scenario analysis in certain situations.⁹ While the SEC acknowledges the cost and difficulty of potential requirements for registrants, we believe it poses a challenge to simultaneously ask those same registrants to assess and quantify the impacts of those burdens in such an abbreviated comment period – especially given that not all registrants covered by the Proposed Rule currently are familiar with such analysis of climate impacts.

Beyond specific requests for comment, the Proposed Rule features a “General Request for Comment” in which the SEC states that feedback accompanied by supporting data and analysis of the issues addressed will be of “greatest assistance” to the agency.¹⁰ The SEC is also seeking feedback on over 100 pages of economic analysis for the Proposed Rule, as well as its initial Regulatory Flexibility Analysis (RFA)¹¹ and evaluations pursuant to the Paperwork Reduction Act¹² and Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).¹³ With respect to its economic analysis in particular, the SEC notes that the Proposed Rule qualitatively addresses factors that may affect disclosure costs but states that the Commission is “unable to accurately quantify these costs” because (among other things) there is “considerable variation in costs depending on a given firm’s size, industry, complexity of operations, and other characteristics, which makes comprehensive estimates difficult to obtain.”¹⁴ As a result, and in place of preparing its own quantitative analysis, the SEC is relying on commenters to provide “relevant data or empirical evidence” on the costs

⁷ Id. at 87.

⁸ Id. at 90.

⁹ Id. at 95.

¹⁰ Id. at 303.

¹¹ Id. at 458.

¹² Id. at 434.

¹³ Id. at 464.

¹⁴ Id. at 345-46.

of preparing climate-related disclosures.¹⁵ It is asking for this data within a period that is far shorter than the time it took the SEC to develop a qualitative analysis. Given the SEC's stated need for quantitative data, it must allow adequate time for commenters to fill these gaps in the Proposed Rule's economic analysis.

Similarly, the SEC's RFA discussion asks commenters to "describe the nature of any effect [of the Proposed Rule on "small" entities] and provide empirical data supporting the extent of that effect."¹⁶ Pursuant to SBREFA, commenters are asked for insight on whether the Proposed Rule is a "major" rulemaking and, thus, subject to the Congressional Review Act. As the SEC acknowledges, such an assessment entails analysis of empirical data on a range of complex issues, including: (1) the potential effect of the Proposed Rule on the U.S. economy on an annual basis; (2) any potential increase in costs or prices for consumers or individual industries; and (3) any potential effect on competition, investment, or innovation.¹⁷ In each of these instances, the SEC is asking commenters not only to respond to the multitude of issues raised in the Proposed Rule, but also to develop empirical data to support those responses.

Given the breadth of the Proposed Rule as well as the detail and volume of information the SEC is seeking in response, we are concerned that the current comment period is not long enough for stakeholders to develop meaningful feedback. Such a truncated timeline unfortunately does not allow for the cultivation and assessment of the data and analysis the SEC is requesting.

Longer Comment Periods Are Common for the SEC's Regulatory Proposals

The SEC acknowledges that the Proposed Rule is based in no small part on the feedback generated by then-Acting SEC Chair Allison Herren Lee's March 15, 2021, statement soliciting comments on climate change disclosures.¹⁸ This solicitation, which entailed a comparatively limited request for responses to 15 multipart questions, was subject to a 90-day comment period. With this precedent in mind, the SEC should allow at least the same duration for the comment period for the Proposed Rule. Because proposing releases often change between website publication and publication in the *Federal Register*,¹⁹ we do not believe it is reasonable to provide a comment period that could ultimately be as short as 30 days from publication given the number and complexity of topics on which the SEC is requesting comment.

It is commonplace for financial regulations that require the collection and analysis of empirical data to have comment periods longer than the Proposed Rule. In 2021 alone, the

¹⁵ Id. at 46.

¹⁶ Id. at 464.

¹⁷ Id. at 465.

¹⁸ Acting Chair Allison Herren Lee Public Statement, "Public Input Welcomed on Climate Change Disclosures" (Mar. 15, 2021), available at <https://www.sec.gov/news/public-statement/lee-climate-change-disclosures>.

¹⁹ See footnote 2

SEC provided 60-day comment periods on several less-complex proposals – including its January 19th proposed rule to amend Rule 144²⁰ and its October 15th proposed rule regarding Form N-PX and related amendments.²¹ This is consistent with past practice. When the Obama-era SEC published a request for data and other information in 2013 to assist the Commission in considering whether to make new rules about the standards of conduct and regulatory obligations for broker-dealers and investment advisers dealing with retail customers, it allowed a 120-day comment period.²²

This historical context highlights the noticeably shorter timeframes that the SEC has recently allowed for comments on proposed rules issued under the leadership of Chair Gensler. According to recent analysis from Center Forward,²³ comment periods for the SEC’s proposed rules issued under Chair Gensler have been open for a maximum 30 days for 74 percent of proposals. This contrasts with the SEC’s practice under the leadership of Mary Jo White (2013 – 2017) and Jay Clayton (2017 – 2020), when proposed rules were subject to comment periods of at least 60 days for 96 percent and 85 percent of proposals (respectively). Moreover, Mary Jo White’s SEC did not issue a single proposed rule that was subject to a 30-day comment period, while under Jay Clayton’s leadership proposed rules were subject to a 30-day comment period only 12 percent of the time.

On January 19, 2022, Chair Gensler delivered remarks at a meeting of the Exchequer Club of Washington, D.C. during which he defended the SEC’s use of shorter comment periods for agency rulemakings.²⁴ Chair Gensler conceded that agencies “*can* do more” than the minimum when it comes to comment period durations, but pointed to the SEC’s use of fact sheets and posting of rule text on its website in advance of publication in justifying its current approach.²⁵ Given the breadth and complexity of this rulemaking, the SEC must do more than the minimum, particularly given that rule text is not final until published in the *Federal Register*, and that providing the minimum possible response time for a rulemaking of this scope and complexity fails to create an atmosphere conducive for the breadth and nature of input the SEC is requesting.²⁶ Members of Congress have also expressed their

²⁰ *Rule 144 Holding Period and Form 144 Filings*, 86 Fed. Reg. 5063 (Jan. 19, 2021).

²¹ *Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers*, 86 Fed. Reg. 57478 (Oct. 15, 2021).

²² *Duties of Brokers, Dealers, and Investment Advisers*, 78 Fed. Reg. 14848 (Mar. 7, 2013).

²³ The SEC’s Comment Periods for New Regulations, CENTER FORWARD, available at <https://center-forward.org/the-secs-comment-periods-for-new-regulations/>.

²⁴ See “Gensler Defends 30, 45-Day Comment Period for SEC Rulemaking Proposals,” THOMSON REUTERS (Jan. 24, 2022), available at <https://tax.thomsonreuters.com/news/gensler-defends-30-45-day-comment-period-for-sec-rulemaking-proposals/>.

²⁵ *Id.* (emphasis added).

²⁶ As Commissioner Peirce has noted, “[f]or complicated rulemakings or at times when we have many rulemakings outstanding simultaneously, 90-day comment periods are likely more appropriate” to allow for proper analysis. Statement of SEC Commissioner Hester Peirce, “Rat Farms and Rule Comments - Statement on Comment Period Lengths” (Dec. 10, 2021), available at <https://www.sec.gov/news/statement/peirce-rat-farms-and-rule-comments-121021>.

concern that “unreasonably” short comment periods “harm the quality of public comment and may run afoul of the Administrative Procedures Act.”²⁷

Finally, as Commissioner Peirce has noted, the Proposed Rule is not the only rulemaking on the SEC’s docket. Instead, the agency is simultaneously soliciting comments on a number of complex rulemakings. As of March 21, 2022, when the SEC released the Proposed Rule, the Commission had no fewer than nine pending proposals open for similarly short comment periods:

1. A February 8, 2022 proposed rule regarding “Money Market Fund Reforms,” subject to an April 11, 2022 comment deadline;²⁸
2. A February 15, 2022 proposed rule regarding “Rule 10b5-1 and Insider Trading,” subject to an April 1, 2022 comment deadline;²⁹
3. A February 18, 2022 proposed rule to amend the SEC’s whistleblower regulations, subject to an April 11, 2022 comment deadline;³⁰
4. A February 24, 2022 proposed rule to shorten the securities transaction settlement cycle, subject to an April 11, 2022 comment deadline;³¹
5. A March 2, 2022 notice reopening the comment period for the SEC’s December 8, 2021 proposed rule regarding the reporting of securities loans, subject to an April 1, 2022 comment deadline;³²
6. A March 9, 2022 proposed rule regarding cybersecurity risk management for investment advisers, registered investment companies, and business development companies, subject to an April 11, 2022 comment deadline;³³
7. A March 10, 2022 proposed rule regarding beneficial ownership reporting, subject to an April 11, 2022 comment deadline;³⁴
8. A March 16, 2022 proposed rule regarding short position and short activity reporting by institutional investment managers, subject to an April 26, 2022 comment deadline;³⁵ and
9. A March 18, 2022 proposed rule regarding alternative trading systems, subject to an April 18, 2022 comment deadline;³⁶

²⁷ Letter from Rep. Patrick McHenry and Sen. Pat Toomey to SEC Chair Gary Gensler Regarding SEC Comment Periods (Jan. 10, 2022), available at https://republicans-financialservices.house.gov/uploadedfiles/2022-01-10_pmc_toomey_letter-gensler_sec_comment_period.pdf.

²⁸ *Money Market Fund Reforms*, 87 Fed. Reg. 7248 (Feb. 8, 2022).

²⁹ *Rule 10b5-1 and Insider Trading*, 87 Fed. Reg. 8686 (Feb. 15, 2022).

³⁰ *The Commission’s Whistleblower Program Rules*, 87 Fed. Reg. 9280 (Feb. 18, 2022).

³¹ *Shortening the Securities Transaction Settlement Cycle*, 87 Fed. Reg. 10436 (Feb. 24, 2022).

³² *Reopening of Comment Period for Reporting of Securities Loans*, 87 Fed. Reg. 11659 (March 2, 2022).

³³ *Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies*, 87 Fed. Reg. 13524 (March 9, 2022).

³⁴ *Modernization of Beneficial Ownership Reporting*, 87 Fed. Reg. 13846 (March 10, 2022).

³⁵ *Short Position and Short Activity Reporting by Institutional Investment Managers*, 87 Fed. Reg. 14950 (March 16, 2022).

³⁶ *Amendments Regarding the Definition of “Exchange” and Alternative Trading Systems (ATs) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities*, 87 Fed. Reg. 15496 (March 18, 2022).

These proposed rules – approximately 700 *Federal Register* pages – do not include separate proposals that the SEC has either released on its website or published in the *Federal Register* since March 21, including: (1) a proposed rule published on March 23, 2022 regarding “Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure,” subject to a May 9, 2022 comment deadline³⁷; (2) a proposed rule published on March 24, 2022 regarding private fund advisers, subject to an April 25, 2022 comment deadline³⁸; (3) a proposed rule released on March 28, 2022 to include certain market participants as “dealers” or “government securities dealers,” which is subject to a comment period that could be as short as 30 days after publication in the *Federal Register*³⁹; (4) a proposed rule published on March 30, 2022 to remove references to credit ratings from Regulation M, subject to a May 23, 2022 comment deadline;⁴⁰ and (5) a proposed rule released on March 30, 2022 to address special purpose acquisition companies (SPACs), which is subject to a comment period that could be as short as 30 days after publication in the *Federal Register*.⁴¹

Registrants, investors, and other interested parties are already working at full capacity to comment on these many outstanding proposals. The release of so many proposals with overlapping comment periods in recent weeks places stress on the public’s ability to provide thoughtful, reasoned comments within these compressed time frames.

Conclusion

We strongly urge SEC to announce at least a 60-day extension of the comment deadline for the Proposed Rule to allow for the meaningful analysis and input that the rulemaking depends on to address the many quantitative and qualitative issues it raises.

Sincerely,



Tom Quaadman

³⁷ *Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure*, 87 Fed. Reg. 16590 (March 23, 2022).

³⁸ *Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews*, 87 Fed. Reg. 16886 (March 24, 2022).

³⁹ *Further Definition of “As a Part of a Regular Business” in the Definition of Dealer and Government Securities Dealer* (March 28, 2022), available in prepublication format at <https://www.sec.gov/rules/proposed/2022/34-94524.pdf>.

⁴⁰ *Removal of References to Credit Ratings From Regulation M*, 87 Fed. Reg. 18312 (March 30, 2022).

⁴¹ *Special Purpose Acquisition Companies, Shell Companies, and Projections* (March 30, 2022), available in prepublication format at <https://www.sec.gov/rules/proposed/2022/33-11048.pdf>.

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