

June 17, 2022

Ms. Vanessa Countryman
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
via email: rule-comments@sec.gov

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

Dear Ms. Countryman:

The Information Technology Industry Council (ITI) appreciates the opportunity to submit comments in response to the Securities and Exchange Commission’s (SEC) proposed rules on *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (File Number S7-10-22). ITI represents the leading global innovators of information and communications technology (ICT), an industry with a demonstrated commitment to corporate sustainability initiatives and transparency. The ICT industry is reported to be one of the few sectors that is “on track” to decarbonize,¹ and was also the first to develop sectoral targets approved by the Science Based Targets Initiative. ITI’s members remain committed to complying with SEC disclosure requirements and otherwise providing stakeholders with appropriate information on material aspects of environmental, social and governance (ESG) issues including climate change.

ITI and its members fully support the SEC’s intent to provide investors with “consistent, comparable, and decision-useful information for making their investment decisions” while also ensuring that there are “consistent and clear reporting obligations” for registrants. However, as detailed in our comments below, we have significant concerns regarding key aspects of the proposed rules. Critical changes to these provisions are needed to ensure the final requirements are reasonably workable for registrants and ultimately further the SEC’s stated goals.

1. The SEC should provide further accommodations, guidance, and tools to support any requirements to disclose Scope 3 GHG emissions.

The proposed rules would require certain registrants to disclose Scope 3 greenhouse gas (GHG) emissions when the registrant has a goal or target that includes Scope 3 emissions or if they are otherwise material to the company. The rules would provide registrants with a brief one-year phase-in period (after the onset of a registrant’s disclosure obligations) to meet such requirements. ITI members are concerned that the Scope 3 GHG disclosure requirements, as proposed, would be overly burdensome and unworkable for registrants. To help mitigate these issues, the SEC should provide further accommodations and supporting resources. The triggers for disclosure – materiality

¹ IEA annual report, Tracking Clean Energy Progress, available at <https://www.iea.org/topics/tracking-clean-energy-progress>.

and Scope 3 goals or targets – are also not sufficiently clear to drive a consistent practice among registrants.

Data estimation, accounting, and tracking tools for Scope 3 emissions are insufficiently developed at this time and do not provide a solid foundation for inclusion of such data in registrants' SEC filings. There are also significant constraints on the quality and availability of Scope 3 GHG data across the value chain for many sectors. For example, within the ICT sector, our members have an overwhelmingly large volume (in some cases tens of thousands) of upstream suppliers from whom they would need to gather and assess data. Many of our members purchase very small amounts of material from a large number of global suppliers, often concentrated in regions where disclosure of data is not required or encouraged. These suppliers do not have the resources or staff to prepare GHG inventories, and our members have limited leverage to require this data. Downstream emissions data from customers is also largely unavailable and difficult to gather because, among other reasons, processes and technologies to gather and transmit this information are still developing. New tools for tracking and reporting would likely be needed across all industries in order to capture Scope 3 data of sufficient quality.

The SEC's proposal to require certain registrants who have established Scope 3-related goals to disclose Scope 3 GHG emissions even where they are immaterial may have a number of negative unintended impacts. For example, it may have a chilling effect on companies considering the adoption of a Scope 3 target or goal now or in the future. It may also divert sourcing away from small businesses that are not yet equipped to provide this data to registrants with an SEC Scope 3 disclosure obligation.

Moreover, the proposal does not provide sufficient clarity for registrants regarding exactly when Scope 3 GHG emissions disclosures will be required. With respect to materiality, the SEC should provide registrants with further guidance on what constitutes a "relatively significant" portion of their overall GHG emissions for purposes of determining materiality. Otherwise, the resources needed to establish that Scope 3 emissions are immaterial would be nearly equivalent to the resources involved with actually disclosing such emissions, since registrants would need to identify and compile GHG emissions associated with each of the Scope 3 categories and then disclose the basis for their determination of immateriality. With respect to goals and targets, the SEC should further specify whether any Scope 3 goals and targets must themselves be material in order to trigger the disclosure requirement and provide more detail regarding the meaning of a goal or target that "includes" Scope 3 emissions.

Accordingly, ITI urges the SEC to consider providing registrants with the following:

- An extended phase-in period (at least 3 years following the effective date) to allow registrants to adequately prepare for Scope 3 disclosures;
- Guidance to enable specific industries to identify relevant Scope 3 categories, while maintaining flexibility to allow registrants to determine the categories that are most relevant to their business for inclusion in disclosures;
- Additional guidance on materiality and targets/goals triggering Scope 3 reporting requirements;
- Tools and resources to assist registrants with all GHG emissions data collection (while preserving flexibility for registrants to digitize and automate data collection or develop other tools to more efficiently monitor emissions and to help streamline their approach to compliance); and

- Stronger protections from liability for all GHG emissions disclosures (see Section 2 below for further detail).
- 2. The SEC should strengthen the proposed safe harbor for Scope 3 emissions disclosures and extend it to disclosures of Scope 1 and Scope 2 emissions.**

ITI members recognize and appreciate the SEC’s proposal to adopt a safe harbor from liability for Scope 3 emissions disclosures due to the challenges associated with obtaining and validating this data and the need to rely on estimates and assumptions. We note, however, that registrants face some of these same challenges when disclosing Scope 1 and Scope 2 emissions. For example, while ITI members robustly track, measure and voluntarily report on their Scope 1 and Scope 2 emissions, transitioning this reporting into the more formal SEC disclosure context with the level of detail and complexity the SEC has proposed introduces the potential for inaccuracy, inconsistency and resulting liability risk. ITI members are also concerned that the proposed safe harbor will be insufficient to protect well-intentioned companies seeking to disclose GHG data, particularly in the current context of rapidly increasing climate-related litigation and legal risk. For example, the Scope 3 safe harbor as proposed would not apply if it is shown that a statement was made without a reasonable basis or was disclosed other than in good faith, but registrants may need to engage in costly litigation over these fact-based questions in order to avail themselves of the safe harbor. To address these concerns, ITI urges the SEC to establish an absolute safe harbor that does not require registrants to satisfy any particular standard, and to extend such safe harbor to cover all GHG emissions disclosures (Scopes 1, 2 and 3).

- 3. The proposed definitions of “climate-related risks,” “transition risks,” and “climate-related opportunities” are overly broad and unworkable, and should be narrowed to focus on registrants’ business operations.**

The proposed rules would define “climate-related risks” and “transition risks” (as well as “climate-related opportunities,” for registrants who opt to disclose these) expansively to include the actual and potential impacts to a registrant’s consolidated financial statements, business operations, or *value chains*. The proposed definition of “value chain,” in turn, would include materials sourcing/processing and the transportation, processing, use, and end life of sold products. Because these terms (particularly the term “climate-related risks”) are used repeatedly throughout the proposed rules, the definitions would insert value chain considerations into nearly every dimension of registrants’ climate disclosures. In addition to compounding compliance costs for registrants, such an approach could result in compendious disclosures that risk obscuring the more critical information that investors demand. The SEC should, at a minimum, narrow these definitions to exclude registrants’ full value chain and focus more squarely on climate-related risks, opportunities, and transition risks in registrants’ direct business operations.

- 4. The SEC should remove any requirements to disclose information on climate-related financial statement metrics from Regulation S-X.**

The SEC is proposing to require as part of Regulation S-X the inclusion of certain climate-related financial statement metrics and related disclosures in a note to a company’s audited financial statements. As proposed, the financial statement metrics disclosures would be subject to audit by

an independent registered public accounting firm and would come within the scope of a company's internal control over financial reporting (ICFR).

ITI and our members believe any reporting on climate-related financial impacts should be removed from Regulation S-X. Much of the information to be disclosed pursuant to these provisions is subject to significant estimates, assumptions, or judgment on the part of preparers, and can often be interpreted differently across companies, making the information extremely difficult and *costly* to consistently produce and compare. Because of this, integrating disclosures on the financial impacts of climate-related events and transition activities under Regulation S-X and subjecting these disclosures to audit and ICFR controls would not be feasible or practical at this juncture. As set forth in Section 12 below, ITI members urge the SEC to allow registrants the flexibility to provide any and all climate-related disclosures required by the final rule in a specialized form (separate from 10-K reports) that is furnished rather than filed with the Commission.

5. The proposed one percent threshold for disclosures of climate-related financial statement metrics is inconsistent with current disclosure practice and the SEC's existing guidance on materiality.

The proposed rules would require registrants to disclose the financial impacts and expenditures from severe weather events, transition activities, and climate-related risks if the aggregate sum of such impacts or expenditures exceeds one percent of the total line item for the relevant fiscal year. This threshold is inconsistent with the SEC's broader guidance on materiality, is inconsistent with other materiality references in the proposed rules, and incorrectly presumes that climate-related impacts can be identified and quantified with precision.

Applying this threshold would likely result in varying and disproportionate disclosures of climate-related financial impacts. For example, the threshold could range widely in dollar amount (one percent of one line item could be \$1M, while it is \$100,000 for another). This threshold would also mark a departure from other recently issued accounting and reporting requirements that have trended toward allowing management to apply judgment when preparing financial statement disclosures, focusing on providing financially material information in the notes to the audited financial statements. Compared to the other scenarios the SEC has identified where a one percent threshold has been used (e.g., excise taxes recorded in revenue, notional amounts of option contract and related party transactions), there is much less precision in quantifying these climate-related impacts and expenditures. In our view, therefore, a threshold as low as one percent would be nearly unprecedented and is likely to result in disclosures of immaterial climate-related impacts in many instances. This would lead to significant investor confusion, as investors may be left with an overly climate-focused and disproportionate view of the financial impacts for the registrant.

ITI and our members urge the SEC to eliminate the one percent threshold, and further recommend that the SEC decline to use a quantitative threshold altogether. Instead, the SEC should consider establishing a more general qualifier that such impacts must be disclosed where the registrant determines they are material, in line with existing definitions and SEC guidance on materiality.

The proposed rules would also require registrants to disclose whether the estimates and assumptions used to produce the consolidated financial statements were impacted by exposures to risks and uncertainties associated with climate-related events and activities. But the rules do not specify any threshold or include a reference to materiality in these provisions. The SEC should also

clarify that registrants need only disclose such impacts on estimates and assumptions where they are material.

6. The SEC should provide registrants with appropriate tools and clearer definitions to determine when events, activities or risks are “climate related.”

As noted above, the proposed rules would require registrants to consider and disclose the financial impact of severe weather events and other natural conditions. However, the SEC has neither identified appropriate tools or resources that registrants could use to assess whether these events are climate-related, nor clearly defined climate-related financial impacts. As proposed, these requirements would create significant compliance burdens to track and report on every severe weather event, as well as to evaluate and determine whether the event is climate related for purposes of these disclosure requirements.

Identifying relevant severe weather events and transition activities, and calculating the corresponding financial impact, may be particularly difficult in circumstances in which a specific activity involves a blend of climate and non-climate drivers. For example, the portion of a newly acquired fixed asset or the change in an insurance premium that is directly attributable to climate will be difficult to ascertain, particularly when other factors are at play (e.g. technological advances). Without clear accounting guidance, measuring the exact financial impact of a “climate-related” event or transition activity will therefore entail many assumptions, estimates and judgments, which may limit the consistency, reliability, and comparability of such disclosed impacts.

Accordingly, the proposed rules should provide significantly more clarity to registrants regarding the meaning of “climate-related” impacts and transition activities. The SEC should also identify – or devote resources to develop – appropriate tools for registrants to make these determinations.

7. The SEC should not require registrants to disclose data or information from historical periods.

The proposed rules would require disclosures of climate-related financial statement metrics (i.e., the financial impacts of climate-related events and transition activities) for the registrant’s most recently completed fiscal year, and for the historical fiscal year(s) included in the consolidated financial statements in the filing. The proposed rules would similarly require registrants to disclose GHG emissions data for such historical fiscal years, to the extent such data is reasonably available.

The SEC’s proposal to require registrants to disclose data and information for historical fiscal years will be challenging during the first few reporting years, particularly when combined with the proposed attestation requirements. For example, if the final rules are adopted and effective by December 2022, large accelerated filers will be required to publish their first disclosures in 2024 for the 2023 fiscal year and will be subject to attestation requirements for Scope 1 and Scope 2 GHG emissions the following year (i.e., for 2025 disclosures covering fiscal year 2024). If registrants are generally required to include three years of historical data, large accelerated filers, including many ITI members, would be subject to attestation requirements for GHG emissions occurring in 2022 and 2021, *prior to the issuance of even the SEC’s proposed rules.*

While ITI members recognize and appreciate the SEC’s attempt to provide a degree of flexibility by requiring historical GHG emissions data only where “reasonably available,” as well as the SEC’s recognition that the registrant may be able to rely on Rule 409 or Rule 12b-21 to exclude a corresponding historical metric, these accommodations are insufficient and do not address similar challenges with respect to the climate-related financial statement metrics. The SEC should limit these reporting requirements to the registrant’s most recently completed fiscal year. Otherwise, the SEC should at a minimum extend the “reasonably available” limitation to financial statement metrics disclosures and provide additional guidance as to when a registrant may exclude a historical metric for a preceding fiscal year on this basis (i.e., where it is not reasonably available).

8. The SEC should extend the phase-in period for the requirement to obtain limited assurance of GHG emissions disclosures and should eliminate any requirement to transition to reasonable assurance.

As noted above, the proposed rules would require large accelerated filers to obtain assurance of their Scope 1 and Scope 2 GHG emissions data as early as 2024. This does not provide adequate time to establish the appropriate systems and controls, or to ensure that attestation providers are properly staffed and prepared. At a minimum, the SEC should extend the phase-in period for assurance by at least one year for all registrants (e.g., require limited assurance for large accelerated filers beginning in 2025, for reports submitted in 2026). ITI and our members also believe that it is premature at this time to establish reasonable assurance requirements. The SEC should assess registrants’ implementation of the extensive new disclosure requirements, monitor evolving industry and auditor practices, and consider whether it would be appropriate to shift to reasonable assurance at a later date.

9. The rules should align with the GHG Protocol and permit registrants to set their organizational boundaries for GHG emissions disclosure purposes using the “equity or control” approach.

The proposed rules generally require registrants to set organizational and operational boundaries for the purposes of identifying the sources that will be included in the accounting of GHG emissions disclosures. The GHG Protocol allows companies to apply one of two organizational boundaries – following either the equity or control approach. Within the control approach, companies can define whether they use operational or financial control. The SEC, however, does not adopt the GHG Protocol’s “equity or control” approach. Instead, the proposed rules would require registrants to apply GAAP accounting principles and use “the same scope of entities, operations, assets, and other holdings within its business organization as those included in, and based upon the same set of accounting principles applicable to, its consolidated financial statements” when calculating Scope 1, 2, and (if required) Scope 3 emissions.

This approach would require many registrants to alter their longstanding GHG accounting practices. In addition to being burdensome for registrants, GHG emissions data allocated to certain scopes would potentially be re-categorized, introducing complexity and confusion for investors. Further, the GHG Protocol is widely used by companies to set climate targets and metrics. By requiring boundaries for GHG emissions disclosures to align with GAAP, rather than the company’s choice of permitted boundary under the GHG Protocol, companies that have set GHG emissions reduction targets based on certain GHG Protocol boundaries may effectively be required to report emissions data that is inconsistent with their targets, leading to further investor confusion. Therefore, we

recommend that the SEC allow registrants the flexibility to continue using their selected approach to boundary-setting under the GHG Protocol.

10. The rules should not impose additional disclosure obligations and associated liabilities on registrants that elect to use emerging analytical tools.

The field of assessing and mitigating climate risk through the use of emerging analytical tools such as scenario analysis is nascent and evolving. With respect to scenario analysis in particular, companies can make a variety of assumptions within the same climate scenarios that will dramatically affect financial outcomes of the analysis. For example, a coal company could model financial impacts for a 1.5C scenario – one scenario with massive deployment of carbon capture and storage (CCS) and another scenario with massive deployment of renewable energy without CCS – and obtain dramatically different results even though both are 1.5C scenarios. Without consistent and standardized assumptions, reporting financial impact from climate scenarios is at best, not informative, and at worst, misleading regarding climate risk. There is also the challenge of correctly attributing financial impact due to climate change as opposed to normal disruptions due to weather or other events that companies have historically experienced. The SEC’s proposal to require registrants using these tools to disclose “the financial impacts on the registrant’s business strategy under each scenario” with both “qualitative and quantitative information” and to disclose the details of registrants’ transition plans, in particular, would not be meaningfully informative to investors and may result in confusing or misleading disclosures.

Further, the SEC’s proposal to require such detailed disclosures only for registrants that elect to use these tools would have a disproportionate impact on early adopters and a chilling effect on companies currently considering them. It could also discourage goal-setting, and result in over-disclosure of sensitive information. Several ITI members are already using or beginning to explore the use of scenario analysis, transition planning, target setting, and internal carbon pricing. Rather than penalize early adopters of these tools, the SEC should encourage registrants to explore their complexities without the concern of triggering new disclosure obligations.

The SEC may also have underestimated in particular the costs associated with scenario analysis disclosures for registrants. The SEC has based the proposed rules in part on the Task Force on Climate-Related Financial Disclosures’ (TCFD) framework, which the SEC notes has been widely accepted, on the basis that this would help mitigate the compliance burden (and therefore the compliance costs) for registrants. However, recent TCFD Status Reports have indicated, for example, that the percentage of companies disclosing strategy resilience (which includes scenario analysis) is significantly lower than that of the other recommended TCFD disclosure topics. In other words, while companies are beginning to explore scenario analysis and similar tools, current reporting on scenario analysis is not well developed – and would therefore be costly to scale up – even among companies already largely following the TCFD framework.

Finally, while we appreciate the SEC’s confirmation that the liability safe harbor protections of the Private Securities Litigation Reform Act (PSLRA) may be applicable to certain aspects of these disclosures, we note that there are limitations on the applicability of the PSLRA. For example, we understand that it does not limit the Commission’s ability to bring enforcement actions. And similar to the proposed Scope 3 safe harbor, this does not go far enough in the current context of rapidly increasing climate-related litigation and legal risk.

To the extent that the SEC imposes additional disclosure obligations (and therefore additional liabilities) on registrants solely because they have elected to use certain emerging analytical tools, the SEC should not require particular scenario analysis methodologies, specific scenarios, or underlying data to be reported. The SEC should instead allow registrants to disclose information regarding their use of scenario analysis (or other emerging tools) in a way that is relevant to their business and their shareholders. To address concerns regarding liability, the final rules should include a safe harbor from liability that is specific to these disclosures.

11. The SEC should modify or remove the prescriptive and detailed disclosure requirements relating to climate expertise and oversight.

The governance-related disclosures in the proposed rules are overly prescriptive and generally fail to account for the various ways in which registrants structure their governance functions. Notably, the proposed rules would require registrants to disclose whether any board member has climate expertise, as well as to identify the board members or board committee responsible for the oversight of climate-related risks. Broadly requiring disclosure of directors' climate expertise excessively constrains company discretion with respect to board expertise, and overemphasizes importance of climate while crowding out other areas of expertise. Such disclosure, particularly when viewed in light of other recent SEC requirements for disclosure of issue-specific director expertise (such as the new cybersecurity disclosure rules), may significantly hamper companies' ability to ensure a well-functioning and dynamic board of directors. Also, mandated disclosure of confidential board processes and agendas could arm activist shareholders with fodder for meritless claims. Accordingly, the SEC should eliminate the requirements to disclose detailed information on board-level climate expertise, or alternatively should ensure that any such requirements provide adequate flexibility for registrants to characterize and contextualize climate-related expertise and oversight within their organizations.

12. The SEC should establish a specialized form and timeline for submissions of climate-related disclosures and allow registrants to keep such disclosures separate from other periodic reports that must be filed with the Commission.

Consistent with our prior comments in response to the SEC's 2021 request for public input, ITI and our members continue to recommend that the SEC permit registrants to provide their climate-related disclosures in a manner that is separate from their annual 10-K filings and associated timeline.

As the SEC properly recognized in the proposing release, registrants may find it particularly difficult to complete their GHG emissions calculations for the most recently completed fiscal year in time to be included in annual reports. While the proposed rules would permit a registrant to use a reasonable estimate of its GHG emissions for the fourth fiscal quarter if actual data is not reasonably available, the registrant would need to promptly disclose in a subsequent filing any material difference between the estimate and the actual GHG emissions. This accommodation is both insufficient and overly burdensome, as it would require registrants to manage multiple sets of GHG data in the public domain with additional costs and resources to provide the initial estimate and then analyze and disclose material differences.

Many of our members also provide GHG emissions data through other frameworks and pursuant to other regulatory requirements. Compiling, reviewing and publishing this data (as well as obtaining

assurance) is a significant undertaking that can extend a number of months beyond a registrant's fiscal year end. Rather than compel registrants to provide incomplete data or estimates in their 10-K filings and then prepare and file amendments or subsequent reports with the final data, registrants should have the flexibility to provide one set of annual climate-related disclosures and GHG data using a separate form and timeline.

Relatedly, in the context of mergers and acquisitions, the SEC should expressly permit registrants to delay by one year climate-related disclosures of information associated with a newly acquired business. The SEC provided such accommodation for registrants in the Commission's final issuing release for the conflict minerals rule and should consider adopting a similar approach here.

ITI further recommends that any and all climate-related disclosures pursuant to these rules should be furnished to, and not filed with, the SEC. Ensuring that registrants will face the most expansive liability risk for such disclosures (e.g., Section 18 liability for information filed with the SEC), may lead some companies to provide minimal contextual or supplemental information in order to limit their potential liability. Investors will need to evaluate whether the climate-related information to be required under these rules will be of real value. In the meantime, registrants should not be held liable for information that has not yet been demonstrated as useful or effective.

ITI and our members appreciate the SEC's consideration of these comments, and remain willing to engage with the Commission and other stakeholders as appropriate to ensure that this important initiative balances investor needs without unnecessarily burdening registrants.

Sincerely,



Erica Thomas
Senior Director of Policy