June 17, 2022

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

Reference: Request for public input on climate change disclosures

The Applied Research Center in Accounting & Analytics (ARC-A&A) of the Brazilian School of Public and Business Administration from Fundacao Getulio Vargas (FGV-EBAPE) aims to enhance and synergize internal and external research collaboration with other researchers and institutions to improve management and audit in public and private organizations. Recently, the ARC-A&A constituted its ESG Information Committee (CIESG) to bridge the gap between academia and practice for developing research topics concerning preparing and analyzing sustainability information released by companies and government entities. It also aims to contribute to developing norms and standards to be met by public companies.

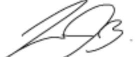
ARC-A&A welcomes the opportunity to respond to the request for public input on climate change disclosures and to comment on The Enhancement and Standardization of Climate-Related Disclosures for Investors (Proposed Rule).

While we draw the Commission's attention to certain areas of concern expressed below, we agree with the direction the Commission is heading. In our view, it responds to significant demand from users of the information reported by companies (including those of financial nature, as well as sustainability-related information, even when disclosed voluntarily). Users have been increasingly asking for enhanced climate disclosures and perceive such information as relevant to their decision-making process if it is more reliable and comparable. In that regard, we provide the following specific comments on the Proposed Rule.

Primary focus on the needs of the users and collaboration with other international efforts and frameworks

In our view, the nature of the information to be provided by companies under the Proposed Rules should be based on users' needs (mainly capital providers --- investors, lenders, and other creditors) and tailored in a manner that is useful for such users when making decisions relating to providing resources to the entity, including (i) buying, selling or holding equity and debt instruments; (ii) providing or settling loans and other forms of credit; or (iii) exercising rights to vote on, or otherwise influence management's actions.

For that matter, we believe that the Commission's oversight would be essential to provide more consistent, comparable, and reliable information that investors can apply in their decision-making process, as outlined above, besides giving greater clarity to the entities as to what is expected of them as they prepare their general purposes financial and non-financial reports. As users' decisions typically involve choosing between alternatives, comparability must be an area of focus by the Commission when discussing the Proposed Rule.



However, to achieve those primary objectives, coordination and collaboration with international bodies and standard-setters within the private sector would not only be beneficial for the process as a whole. However, they would be the key to a successful implementation and effective communication with the markets. As those international bodies and standard-setters within the private sector are currently undergoing regulations and frameworks to incorporate, endorse or otherwise support ESG regulations, they are in a privileged position to assist the Commission in achieving its objectives. For example, the Commission could require issuers to report ESG information using one or more existing frameworks, as long as the framework meets the criteria deemed necessary by the Commission. In our view, comparability would not be affected by such practice as long as (i) the adopted framework would be focused on the needs of the users and the disclosure of information that users perceive as relevant; (ii) the framework allows an entity to adjust its disclosures to its particular facts and circumstances; and (iii) the organization developing and maintaining the framework follows due process, is transparent and objective and has the expertise, governance that the Commission believes are necessary for disclosure rules incorporating the framework.

Given the significant number of non-domestic U.S. registrants subject to SEC rulings and the significance of overseas operations from domestic SEC registrants, we believe a set of consistent requirements converged to other well-recognized frameworks is indeed needed. It would reduce information costs to both preparers and analysts.

Materiality consideration

Although the Proposed Rule discusses the concept of materiality, such as in the context of certain emissions disclosures (including scope 3 emissions), we believe that materiality should be an integral part and utilized in a pervasive manner on the whole framework for disclosures.

The disclosure rules adopted by the Commission are more likely to achieve the intended benefits by ensuring that material, decision-useful information for users of financial and non-financial information are disclosed in all areas encompassed by the Proposed Rule. As such, disclosures should be based on the entity's specific materiality assessment to identify the most relevant issues to an individual entity, mainly the information used to manage the business. Specific requirements included in the proposal (such as requiring disclosure in financial statement footnotes about the impact of climate-related events and transition activities on the line items of consolidated financial statements unless those represent less than 1 percent of the total line item for the relevant fiscal year) seem contradictory to the materiality guidelines that apply to other different areas of the Proposed Rule as well as long-established materiality guidance that applies to the financial reporting in SEC filings as well as other accounting frameworks, such as the IFRS. Determining a specified threshold, especially one that is likely to represent a trivial amount in an entity's specified expenses line item, will demand disclosure of information that is possibly clearly immaterial (both from a qualitative and quantitative point of view) and that may obscure more relevant and material information presented in the respective footnotes in the financial statements. Also, this approach may lead to the inclusion of information in the financial statements that would not have been disclosed in other sustainability or climate-related reports that should be more pervasive and detailed regarding those matters.

Finally, we believe the Commission should apply the same definition of "material" that currently applies to financial and non-financial disclosure in SEC filings since this definition is well-established in U.S. securities law and is flexible enough to apply to the entire spectrum of financial and non-financial disclosures. In our view, an alternative materiality framework could cause confusion and inconsistency in its application.

Scope 3 and safe harbor from liability

The proposal includes disclosure of certain information that would depend on an entity's actions, such as the requirement of an entity to provide scope 3 emissions disclosure if it has set a scope 3 target or goal or if the entity utilizes a scenario analysis, maintains an internal carbon price, or has adopted a transition plan. As the detailed reporting requirements would be triggered by specific actions or positioning by the entity (in that regard, entirely under the entity's control), we believe the rules could disincentivize the entities from taking

such actions or lead them to modify their planning around these types of actions, which could eventually lead to inconsistency in reporting among the entities.

While we acknowledge it can be challenging to measure these emissions (especially those in scope 3), we believe they are essential to understanding the full range of an entity's climate impact, given their significance as the primary source of entities' carbon footprint. The uncertainty inherently associated with the process does not prevent an entity from performing its assessment and measurement on a reasonable and appropriate basis nor supporting its process on existing and well-accepted guidelines and frameworks. As such, we believe that a mandatory approach for scope 3 emissions must be the target specified by the Commission in the Proposed Rule.

Scope 3 disclosures would benefit from a safe harbor from liability that would deem those disclosures not fraudulent statements unless made or reaffirmed without a reasonable basis or disclosed other than in good faith. According to the Proposed Rule, the safe harbor is intended to mitigate potential liability concerns associated with providing emissions disclosure based on information that may not be under complete control of the reporting entity (i.e., third-party information) by making clear that registrants would only be liable for such disclosure if it was made without a reasonable basis or disclosed other than in good faith. In our view, the proposed safe harbor is appropriate as it allows the entities to work and improve their emissions reporting processes as well as ensuring appropriate internal controls and respective supporting documentation that can demonstrate that those are made on a reasonable basis and based on supportable assumptions, especially during the transition period.

Reliability of information and assurance from independent parties

Reliability of the information reported and the confidence level that capital markets can place on ESG information reported by companies under the Proposed Rule must be considered the main factor, as this will directly affect the quality of decisions made under such information. We note that current rules address this as reports filed under the Exchange Act are subject to the entity's Disclosure Controls and Procedures (DCPs), which are, in turn, the responsibility of management and part of their assessment of the effectiveness of internal controls reported in quarterly filings (or annually for the FPIs). We believe that for any such ESG information to be reported in periodic filings, the same guidelines and responsibilities should apply, as making those information part of management's responsibilities for maintaining effective DCPs would ensure an increased level of governance from management as it relates to such information and potentially leads to increased reliability to the capital markets. We also believe that treating the proposed climate-related disclosures as information "filed" rather than "furnished" (and, therefore, subject to potential liability and the abovementioned DCPs) as suggested by the Proposed Rule is appropriate as it would demand a more comprehensive and careful review of the information presented by the preparers, which in turn would increase the quality of reported information.

Further, independent third-party assurance would also increase users' confidence in the quality of climate information and enhance its usefulness. However, we believe it is critical that currently existing independence guidelines that apply to the auditor's relationship with the entity as part of their financial statement audits are similarly applied to assuring ESG information. Guidance from the SEC's Office of the Chief Accountant notes that "(...) ensuring auditor independence is as important as ensuring that revenues and expenses are properly reported and classified". In our view, the basis for this affirmation equally applies to ESG information since deficient ESG reporting would lead to a similar outcome, failure in providing to an investor the true and fair view of an entity's practices and actions regarding ESG matters and, in consequence, providing unreliable information that may lead to erroneous decisions from users. Independent parties assuring such information should have at least: (i) expertise in evaluating internal systems and processes for collecting, analyzing, and reporting information; (ii) an effective system of quality control to monitor the consistent application of attestation standards; (iii) established procedures for how to leverage the input of specialists and a process to assess their qualifications and objectivity; (iv) staff that is appropriately trained, including knowing business models, risks, and controls, experience in accounting and assurance standards, technology and digital knowledge, and the ability to be objective and exercise due professional care, and (v)

established standards that define performance and reporting requirements in order to ensure the consistency and comparability of the provided assurance.

In that regard, an entity's appointed external auditor possesses the independence (as a pre-existing requirement for the audits of financial statements) and is expected to possess the skills, knowledge, and experience to provide such assurance. We believe the Commission should consider whether it would be beneficial to mandate that the same auditor responsible for auditing an entity's financial statements would also be in charge of assuring the ESG information. As it relates to the level of assurance demanded from the auditor's attestation, we believe that "reasonable assurance" (the same basis applies to the financial statements) should be the basis of the independent attestation, rather than "limited assurance," including on the Scope 3 emissions disclosure.

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We make ourselves available and would be pleased to discuss our comments or answer any specific questions that the Commission or its staff may have. Please contact Ludwig Miguel Agurto Berdejo at [redacted] regarding our submission.

Respectfully,

Cordialmente,

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