



June 17, 2022

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

File Number S7-10-22
The Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Ms. Countryman:

On March 21, 2022, the Securities and Exchange Commission (SEC or “the Commission”) proposed a rule to enhance and standardize regulated companies’ disclosure of climate-related risks in registration statements and annual reports. The rule calls for registrants to include information on both “climate-related risks that are reasonably likely to have a material impact on its business, results of operations, or financial condition,” and a series of greenhouse gas metrics – including Scope 3 emissions – beginning as early as fiscal year 2023.¹ FMI – the Food Industry Association appreciates the opportunity to offer comments on this rulemaking and our view of how it will impact member companies.

As the food industry association, FMI works with and on behalf of the entire industry to advance a safer, healthier, and more efficient consumer food supply chain. FMI brings together a wide range of members across the value chain — from retailers that sell to consumers, to producers that supply food and other products, as well as the wide variety of companies providing critical services to retailers, wholesalers, and suppliers — to amplify the collective work of the industry.²

Efforts at addressing climate risk are central to many of FMI’s members’ business model. For example, a 2020 industry poll found that – even in the midst of the COVID-19 pandemic – 72% of surveyed companies had quantified goals and implementation timelines around reduction in

¹ <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>.

² Additional information about our organization is available at www.FMI.org.

energy usage and 68% had similar plans in place around reduction in food waste.³ Both of these areas are significant contributors to the industry's overall greenhouse gas emissions.

FMI member companies have worked diligently to share these sustainability efforts with both the public and investors and have rallied around the importance of transparency and clear metrics as cornerstones of these educational efforts. Many companies annually produce Corporate Social Responsibility (CSR) or Environmental, Social, Governance (ESG) Reports available to the public; even more companies include metrics around these issues in their annual reports.

The Task Force on Climate-Related Financial Disclosures (TCFD) recommendations that the SEC used to model the proposed framework are familiar to members of the industry and many already use them as the basis for their own current reporting. As such, the decision to use these metrics as the starting point for the rulemaking makes sense as an easily available and recognized set of guidelines that builds upon what many in the food industry are already reporting. However - when viewed across the full breadth of the industry - companies have quite different knowledge of the TCFDs standards; status of implementation; and confidence in the data available to them. As such, the proposed rule will impact companies very differently based on their current climate goals and timeframes.⁴

As a result of the challenges preparation and compliance with the proposed rule will pose for members of the food industry, FMI respectfully requests that the Securities and Exchange Commission consider the following amendments to the proposed climate risk disclosure rule:

An expanded implementation timeline of five years

FMI appreciates that the SEC provided a staggered implementation timeline based on company size in the proposed rule; but the first round of reporting could be required as early as fiscal year 2023 for some members of the industry.⁵ This is simply too quick of a timeline for companies that are still battling COVID-19, supply chain and geo-political challenges, and working tirelessly to keep the shelves stocked with food in one of the most challenging economic environments in recent history. While FMI acknowledges that the risks of climate change are not on hold just because other crises may be taking precedence, imposing a new and complex reporting requirement that will likely require engagement from virtually every aspect of many companies' operations is particularly inopportune at this time. As such, we are requesting that the SEC consider extending the implementation timelines proposed in the rule, with a specific recommendation for a five-year window from the date of issuance of the final rule.

The implementation challenges for the food industry will not always breakdown along size issues. A mid-size retailer with limited self-distribution operations may very well have a much

³ Reported in *Sustainability in the Food Industry: An Evolving Landscape*, 2021. Surveyed companies included both public companies registered with the SEC and private non-registrant companies.

⁴ We believe the compliance challenges will not necessarily operate in a way where early adopters of climate goals necessarily have an easier pathway forward. Differences in business models, operating areas and even local, state, national and international regulatory regimes could all play significant roles in impacting the compliance costs and challenges of incurred to implement this rule.

⁵ As noted in the rule, the reporting will actually take place in 2024 for FY2023. But impacted companies will almost certainly need to have plans in place near the beginning of the fiscal year in order to accurately capture and compile the data required.

more straightforward task of calculating their emissions than a larger operator who has retail stores, distribution centers, multiple central kitchens, a trucking fleet, and private label manufacturing operations. Even businesses that have begun work on collecting and publishing this data may face new challenges when meeting with the disclosure requirements of the proposed rule and the heightened responsibility of reporting on financial disclosures. FMI very much appreciates the longer timeframes for reporting by small businesses but would also reiterate that the challenges in implementation do not simply come down to size.

A longer timeframe for compliance than the one proposed in the rulemaking would allow companies in the food industry time to adequately understand the requirements and begin building the necessary capacity (including in some cases in cooperation with their suppliers), while not disrupting ongoing operations or requiring the reallocation of scarce resources and manpower. FMI respectfully submits that five years is a reasonable timeframe for the necessary education, adaptations, and commitments to take place in a non-disruptive manner and we urge the Commission to consider this change.

Further clarity around the definition of “material impacts”

The food industry faces significant challenges in accurately describing “material impacts” related to climate change, even under the TCFD framework. When you look at the food retail aspect of the value chain⁶, a grocery store averages over 30,000 distinct items and larger models can easily exceed 45,000.⁷ Large retailers have thousands and sometimes tens of thousands of suppliers located all over the United States and the globe. Under these circumstances any kind of granularity around the supply chain is extremely difficult to achieve and would result in literal volumes of disclosure. When you look at the six specific areas of disclosure outlined in the rule⁸, even high-level disclosures around medium- and long-term timeframes are so difficult to accurately quantify that these estimates can be outdated before the report is even printed. As noted in the rulemaking, there is a significant difference around these currently voluntary disclosures and their evolution into mandatory disclosures included in an SEC filing. FMI respectfully requests that the Commission provide greater clarity around the definition “material impacts” and expectations related to the breadth of disclosure for businesses like those in the food industry that offer myriad products from a wide range of suppliers.

Trial projects and longer timelines around Scope 3 emissions

The same circumstances that make defining “material impacts” so challenging for the food industry – a huge diversity of products offerings and suppliers – make quantifying Scope 3 emissions extremely difficult. FMI greatly appreciates that the SEC included a safeguard provision and longer phase-in period for Scope 3 emissions. As it stands, data confidence around the collection of Scope 3 data would likely rank low in the food industry; the challenges around gaining an accurate picture are currently very significant. While the industry is improving in its efforts on capturing Scope 3, FMI urges the SEC to allow the broadest possible scope for companies in constructing these numbers, including allowing the use of science-based formulas, standardized figures based on research, and all reasonably supported estimates.

⁶ FMI’s membership includes a significant majority of the food retail industry.

⁷ <https://www.fmi.org/our-research/supermarket-facts>

⁸ P. 72 – business operations, including locations; product types; suppliers and other parties in the value chain; mitigation efforts; R&D expenditures; and other impacts.

Despite the traction the food industry is gaining in capturing Scope 3 figures, FMI encourages the SEC to consider engaging in pilot projects with willing businesses to help understand the challenges unique to specific industries; a food retailer is going to have vastly different Scope 3 challenges than a fossil fuel producer or a financial services company. Similarly, we would encourage the Commission to extend the timeline for Scope 3 reporting and to extend enforcement discretion around these figures for the longest possible period.

The United States agriculture industry has raised significant concerns about Scope 3 reporting requirements and the impact the SEC's rulemaking might have on their operations, despite most participants being non-registrants. FMI would encourage the SEC to engage with members of the food industry (many of whom are SEC registrants) and members of the agricultural economy to educate members about both sectors about the requirements of the rulemaking and what will be needed from them going forward. It is FMI's belief that collecting farm or ranch-level emissions data to construct a Scope 3 figure is currently impractical. We also believe it is important for the SEC to work with both regulated and unregulated industry to respect current commercial relationships and engage all parties to help understand what will (and will not) be expected of them through this rulemaking.

FMI greatly appreciates consideration of the issues raised in this letter. We are happy to answer any further questions that might arise from this submission or offer any additional information that might be necessary.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Andrew S. Harig".

Andrew S. Harig
Vice President – Tax, Trade, Sustainability, & Policy Development