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

Re: File No. S7-10-22: The Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Ms. Countryman,

The NYSE Sustainability Advisory Council appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC") proposal ("Proposal")<sup>1</sup> for disclosure of certain climate-related information in registration statements and annual reports by registrants. The NYSE Sustainability Advisory Council (the "Council"), launched in early 2022, is comprised of the heads of sustainability of select NYSE-listed companies that are recognized as leaders in their industries. Council members represent all sectors of the market and consult with NYSE and its listed company community to provide knowledge and expertise in sustainability and ESG. The goals of the Council are centered around identifying and sharing best practices and improving collaboration in the rapidly evolving world of sustainability.

The Council supports the Commission's initiative in proposing to standardize the disclosure regime around climate risk. We are strongly supportive of sustainable business practices and appreciate common-sense regulatory initiatives designed to improve transparency, harmonization, and comparability of climate risk disclosures. Based on its members' commitment to sustainability, effective ESG management and experience producing climate-related disclosures, the Council offers the following comments on the Proposal<sup>2</sup>.

- 1. The Infrastructure for Generating Reliable Scope 3 Emissions Data Is Not Fully Developed and Mandated Disclosure of such Data Should Not be Required at this Time.***

The Council believes it is premature to require disclosure of Scope 3 emissions, even for large accelerated filers. At a minimum, a delay of several years is needed to (i) provide the necessary time for methodologies used in scope 3 emission calculations to mature and be standardized, and (ii) enable companies to enter into any contractual arrangements to procure the required data. Among the members of the NYSE Sustainability Advisory Council, there is no uniform approach to disclosing Scope 3 emissions data. Due to this lack of consensus, the Council

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

<sup>2</sup> The comments provided herein are the result of a collaborative effort among members of the NYSE Sustainability Advisory Council. While reflective of the general views of the Council, not every member is supportive of each comment.

recommends that the Commission allow the industry to settle on a minimum level of standardization for any narratives around Scope 3 emissions before considering whether to require disclosure.

The Council recognizes that under the Proposal, registrants would disclose “Scope 3 emissions only if those emissions are material, or if the registrant has set a GHG emissions reduction target or goal that includes its Scope 3 emissions.”<sup>3</sup> The Commission correctly acknowledges the difficulty in obtaining Scope 3 data,<sup>4</sup> and “that the methodologies pertaining to the measurement of GHG emissions, particularly Scope 3 emissions, are evolving.”<sup>5</sup> Registrants will be offered the flexibility “to identify the categories of upstream and downstream activities that have been included in the calculation of its Scope 3 emissions.”<sup>6</sup>

Given the difficulties associated with collecting Scope 3 emissions data, generally, and that the methodologies used in calculating this data are both unfolding and subject to interpretation, the Council is concerned that the framework for producing reliable Scope 3 emissions data is not mature enough to enable compliance with the proposed Scope 3 disclosure requirement and be helpful to investors. Specifically, varying approaches taken by registrants towards categorizing upstream and downstream activities may stymie the Proposal’s stated goal of generating disclosures that can be easily compared between issuers. The Council believes that the qualitative narrative that explains a registrant’s inclusion/exclusion criteria for its Scope 3 emissions is critical for setting proper context. Focusing solely on numerical disclosure could lead to investor confusion and incorrect assumptions about comparability that do not actually exist.

**2. *Compelling Disclosure of Immaterial Scope 3 Emissions Could Serve as a Disincentive to Establishing Emissions Reduction Targets.***

Presently, a substantial number of companies voluntarily publish forward-looking emission reduction targets, including those for Scope 3 emission reductions. As contemplated, the Proposal would require registrants to disclose their Scope 3 emissions data only if those emissions are material or if they are included in any GHG emissions reduction plan. For those registrants whose Scope 3 emissions are immaterial, the Council believes that the Proposal will serve to discourage registrants from establishing GHG emissions reduction targets that include Scope 3 emissions simply to avoid including such information in their annual reports or registration statements filed with the Commission. Accordingly, the Council suggests that the Commission not require registrants to disclose Scope 3 emissions solely because these emissions are part of a stated reduction goal or targets. Disincentivizing registrants from setting goals to reduce their scope 3 emissions is counterintuitive to the Proposal’s stated purpose.

**3. *If Scope 3 Emission Disclosures are Required, A Longer Phase-in Period is Warranted.***

As discussed above, the Council believes that disclosures of Scope 3 emissions should not be required at this time. If the Commission is not inclined to remove these requirements from any final rule, however, the Council urges the Commission to consider a longer phase-in period before such disclosure is mandated. As drafted, the Proposal

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<sup>3</sup> See p. 170 of the Proposal.

<sup>4</sup> “Scope 3 emissions typically result from the activities of third parties in a registrant’s value chain and thus collecting the appropriate data and calculating these emissions would potentially be more difficult than for Scopes 1 and 2 emissions.” (p.168-169). “It may also be necessary to rely heavily on estimates and assumptions to generate Scope 3 emissions data.” (p.218)

<sup>5</sup> See p. 167 of the Proposal.

<sup>6</sup> See p. 179 of the Proposal.

will provide an additional one-year phase-in period for the Scope 3 emissions disclosure requirements.<sup>7</sup> Given the challenges associated with compiling Scope 3 emissions data, the Council believes this one-year phase-in period is insufficient. The Proposal posits that increased availability of Scope 1 and 2 emissions data will serve as useful inputs for calculating Scope 3 emissions. That assumption, however, discounts the fact that the Proposal applies only to public companies and not the estimated 6,000,000 private companies<sup>8</sup> in the United States. The ability to leverage publicly disclosed Scope 1 and Scope 2 data, therefore, can only be achieved when the third party in the value chain is an SEC registrant.

Because the Proposal does not compel disclosure by private companies, the Council believes that the ability of many registrants to obtain Scope 1 and 2 emissions data from private companies in their value chain will be contractual in nature. A one-year phase-in period does not provide sufficient time for registrants to negotiate the provision of this data from their suppliers and value chain members. The Council recognizes that the Proposal allows for estimation of Scope 3 emissions when necessary. However, we believe that any benefit to investors from the public disclosure of Scope 3 emissions is maximized when the data is based on actual--rather than estimated--inputs. For these reasons, the Council encourages the Commission to provide a longer phase-in period for Scope 3 emissions disclosure should that disclosure requirement remain in the rule.

**4. *The Proposal's Required Footnote to a Company's Audited Financial Statements is Overly Complex, and the Burden of Compliance Outweighs the Benefit to Investors.***

Under the Proposal, companies will be required to disclose the positive and negative impacts of severe weather events, mitigation expenditures, transition activities and other climate-related risks on each line item of their consolidated financial statements. The positive and negative impacts must be disclosed separately, on an aggregated line-by-line basis, unless the absolute aggregate value of both positive and negative impacts represents less than 1% of a particular line item. The Council is concerned that (i) the analysis needed to produce this disclosure will rely heavily on speculations and estimations that could vary widely among companies, (ii) inclusion of these metrics in audited financial statements will have substantial implications on a company's reporting infrastructure, and (iii) the 1% threshold triggering disclosure is unusually low and presents a series of concerns around applying specificity to processes driven largely by assumptions.

As noted in the Proposal, the proposed financial statement metrics will involve "estimation uncertainties" driven by the application of "judgements and assumptions." In the context of severe weather events, which are inherently unpredictable and varying in scope, it is a virtual certainty that there will be large discrepancies in how companies apply these judgments and assumptions. Even if a company provides narrative disclosure on the basis for its presentation, it is highly likely that investors will be unable to make meaningful comparisons between companies, a core premise of the Proposal. Including these speculative metrics in a company's audited financial statements presents further challenges. To properly classify and analyze the financial metric inputs, companies will likely have to integrate new procedures and internal controls into their existing reporting infrastructure. Audit firms will similarly have to consider how these novel metrics should be evaluated. The effort and costs to develop these procedures and systems should not be underestimated, especially in light of the expedited deadline for compliance applicable to many companies.

Against the backdrop of a 1% disclosure threshold, the concerns expressed above make the proposed financial statement metrics even more questionable. The Council believes that triggering disclosure based on a 1% impact

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<sup>7</sup> See pg. 304 of the Proposal.

<sup>8</sup> Source: [https://www2.census.gov/programs-surveys/susb/tables/2019/us\\_state\\_6digitnaics\\_2019.xlsx](https://www2.census.gov/programs-surveys/susb/tables/2019/us_state_6digitnaics_2019.xlsx)

to a financial statement line item is atypical and will result in a large volume of extraneous disclosure that has the potential to overstate climate risk to a particular metric and mislead investors. At minimum, the Council urges the Commission to increase the triggering threshold for disclosure. Better still, the Council asks the Commission to apply a materiality standard for disclosure and consider whether this novel disclosure can be housed outside the financial statements and unaudited.

***5. Current Reporting Timelines Are Not Compatible with the Proposed Disclosures, and a Separate Mid-Year Climate-Focused Filing Should be Considered.***

Under the Proposal, registrants would be required to disclose their climate-related risks and GHG emissions data in their consolidated annual reports (e.g. Form 10-K or 20-F) under existing financial reporting timeframes. The Proposal contemplates that data for the fourth quarter of a fiscal year could be initially estimated and subsequently amended and reconciled in the following year's financial statements should the registrant determine the actual risks materially deviated from its initial estimation. Given the due date for most annual reports early in the calendar year, the Council believes that including the required climate disclosure in its annual report will prove challenging or impossible for many registrants.

Relying on fourth quarter estimates to prepare an annual report only to amend such metrics later leads to the unfortunate result of numerous filings that may be confusing to investors. Instead, the Council encourages the Commission to consider the creation of new filing type, due in the middle of a registrant's fiscal year, that is dedicated entirely to climate related disclosures. Allowing registrants to report on this alternative timeline will lessen the burden of compiling climate data at year end and have the added benefit of separating this valuable disclosure into a distinct filing rather than adding it to already dense annual reports.

As an initial matter, in Council members' experience, it is unlikely that actual reported emissions from a prior fiscal year will be available in time to meet the filing due date for most annual reports. Although the Proposal contemplates the use of estimates in certain circumstances, the Council does not believe there is precedent in other accounting standards for commingling actual and estimated data in the preparation of financial statements. Shoehorning the Proposal's climate disclosures into annual reports on the existing reporting timelines could raise significant audit challenges, particularly for smaller registrants.

Adding to these challenges is that some of the Proposal's disclosures are required regardless of whether they are material or not. For more than 12 years, registrants have been required to make climate-related disclosures when such risks are deemed material and have developed internal processes for making such materiality determinations. Indeed, materiality is the core principle of corporate disclosure within a registrant's financial statements, and the Council is concerned that requiring immaterial disclosures risks muddying a registrant's financial statements, making them less useful to investors. Moreover, the Council is concerned that straying from the core concept of materiality could make the Proposal more susceptible to a successful legal challenge and result in a lost opportunity for the Commission to make meaningful reforms in this area.

Lastly, the Council notes that registrants may face additional hurdles with providing accurate climate disclosure in their annual reports due to corporate changes such as M&A/divestiture activities, or a change in filer status. For example, in situations where a registrant makes an acquisition, and the acquired entity is consolidated for the purposes of preparing financial statements, it is unclear what disclosure is required if the acquired company did not previously measure or calculate its climate-related risks or GHG emissions. Consequently, it may not be feasible for the acquiring registrant to be able to make backwards assessments of the acquiree's emissions. Similarly, registrants are required to evaluate their filer status at the end of each fiscal year. If a registrant finds

that its filer status has changed (for example, it is now appropriately classified as a large accelerated filer) it may be subject to new climate related disclosures to which it was not previously subject and face the challenge of amending historical financial statements for which its books have already been closed. The Council believes that some of these complications could be addressed by shifting the reporting of climate-related risks to a separate timetable.

**6. *The Proposal's Requirement related to Board-level Climate Expertise should be Harmonized with Existing Frameworks.***

The Proposal would require “a registrant to identify any board members or board committees responsible for the oversight of climate-related risks”<sup>9</sup> as well as “disclosure of whether any member of a registrant’s board of directors has expertise in climate-related risks.”<sup>10</sup>

The Council agrees that corporate boards should maintain careful oversight of applicable risks, including climate change. Rather than focus on the individual qualifications of any one board member, however, the Council recommends that the Proposal be revised to take a more holistic view of board responsibility for managing climate risk. Under common climate reporting frameworks, organizations are expected to disclose a narrative discussion of the board’s oversight of climate related issues including (i) process and frequency in which the board are informed about climate related issues; (ii) whether and how the board considers these issues when guiding strategy, risk management policies, budgeting and business planning; and (iii) how the board monitors and oversees progress against goals and targets for addressing climate related issues.

The Council recommends that the Proposal follow the approach taken by existing frameworks and require that registrants disclose their board’s approach to climate, which would represent the primary information of importance to investors.

**Conclusion**

We commend the Commission for its thorough analysis and detailed Proposal. More standardized climate-related disclosures benefits investors and encourages registrants to take a leading role in meeting international GHG reduction targets. The Council’s suggestions are aimed at furthering the Proposal’s stated goals while ensuring that registrants best positioned to provide investors with the most useful information in this critical new disclosure regime.

Respectfully submitted,



Elizabeth King, Chair  
NYSE Sustainability Advisory Council

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<sup>9</sup> See pg. 100 of the Proposal.

<sup>10</sup> See pg. 100 of the Proposal. Moreover, this disclosure requires “sufficient detail to fully describe the nature of the expertise.”