



**November 1, 2022**

Vanessa A. Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549–1090

**RE: Supplemental Comment Letter on Proposed Rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors, File No. S7-10-22**

Dear Ms. Countryman:

The Society for Corporate Governance (“Society”) submits this letter in response to the reopening of the comment period by the Securities and Exchange Commission (“SEC” or the “Commission”) on the proposed rulemaking, “The Enhancement and Standardization of Climate-Related Disclosures for Investors” (“Proposed Rule”), released by the Commission on March 21, 2022 (“Proposing Release”), published in the Federal Register on April 11, 2022, at 87 FR 21334, File Number S7-10-22.<sup>1</sup>

Founded in 1946, the Society is a professional membership association of more than 3,600 corporate and assistant secretaries, in-house counsel, outside counsel, and other governance professionals who serve more than 1,600 entities, including 1,000 public companies of almost every size and industry.

This letter supplements our comment letters dated June 17, 2022 (“Society Comment Letter”) and September 9, 2022 (which summarizes the recommendations included in the Society Comment Letter).<sup>2</sup>

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<sup>1</sup> We submit this letter pursuant to the Commission’s subsequent notice, “Resubmission of Comments and Reopening of Comment Periods for Several Rulemaking Releases Due to a Technological Error in Receiving Certain Comments”, released by the Commission on October 10, 2022, and published in the Federal Register on October 18, 2022, at 87 FR 63016.

<sup>2</sup> Society for Corporate Governance, Comment Letter on Proposed Rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022); Society for Corporate Governance, Supplemental Comment Letter on Proposed Rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors (Sept. 9, 2022).

## I. The Proposed Rule Is a Major Rule

In the Proposing Release, the SEC seeks comment on whether the Proposed Rule would be a “major rule” for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”).<sup>3</sup> It is clear that the Proposed Rule would constitute a major rule under the SBREFA based on its anticipated economic impacts. As such, the rulemaking should adhere to the information and procedural requirements applicable to major rules under the Congressional Review Act (“CRA”—including the requirement for submittal of a report to each House of Congress designating the Proposed Rule as a “major rule” and the 60-day waiting period before a finalized “major rule” can take effect. If these important procedural protections are not observed, we are concerned that the SEC’s rulemaking process would deprive both the Commission and the public of the time and information needed to adequately analyze the significant economic and other impacts of the Proposed Rule.

The SBREFA defines “major rule” as “any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—(A) an annual effect on the economy of \$100,000,000 or more . . . ”<sup>4</sup> Congress and the Office of Information and Regulatory Affairs (“OIRA”) have both specifically indicated that compliance costs should be included in assessing whether rulemaking meets the economic threshold for classification as a “major rule” under the SBREFA.<sup>5</sup> While the Proposing Release indicates that direct costs to attain compliance “could potentially be significant,” it also notes potential indirect costs including additional litigation risk and compelled disclosure of proprietary information that may be competitively disadvantageous to the company.<sup>6</sup>

The SEC’s own compliance cost estimates clearly show that the Proposed Rule is a major rule. PRA Table 4 of the Proposing Release estimates that issuer external costs will increase by

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<sup>3</sup> Proposing Release at 450. In particular, the Proposing Release requests comment on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential adverse effect on competition, investment, or innovation.

<sup>4</sup> Small Business Regulatory Enforcement Fairness Act of 1996 at §804(2); *See also* SEC, [Rulemaking Process](#) (July 2002) (“The primary element of the major rule analysis is whether the rule is likely to have an annual effect on the economy of \$100 million or more”) (last accessed October 20, 2022). The \$100 million threshold is identical to the monetary threshold for determining whether a rule is “major” under the Congressional Review Act (which was enacted as part of the SBREFA) or “economically significant” under Executive Order 12866. See [The Congressional Review Act \(CRA\): Frequently Asked Questions](#) (Nov. 2021) at 2; [OIRA, Regulatory Impact Analysis: Frequently Asked Questions \(FAQs\)](#) at 2.

<sup>5</sup> OIRA, Regulatory Impact Analysis: Frequently Asked Questions (FAQs) at 1. (“The \$100 million threshold applies to the impact of the proposed or final regulation in any one year, and it includes *benefits, costs, or transfers*. (The word “or” is important: \$100 million in annual benefits, *or* costs, *or* transfers is sufficient; \$50 million in benefits and \$49 million in costs, for example, is not.”)); [The Congressional Review Act \(CRA\): Frequently Asked Questions](#) (Nov. 2021) at 10 (“Rules can meet the economic threshold for classification as a major rule (\$100 million effect on the economy) for a variety of reasons, including because they involve compliance costs, result in transfers of funds, prompt consumer spending, establish user fees, or result in cost savings for consumers and taxpayers”).

<sup>6</sup> Proposing Release at 371, 388-89.

nearly \$6.4 billion.<sup>7</sup> The SEC further estimates that the annual internal cost of compliance for at least the first five years after the initial year of compliance would be \$120,000 for a smaller reporting company (SRC) and \$150,000 for a non-SRC (estimated outside professional costs are substantially higher).<sup>8</sup> Given that the Proposing Release indicates that, based on 2020 data, there were approximately 3,850 affected non-SRC filers and 3,110 affected SRC filers,<sup>9</sup> a rough estimate of the aggregate annual internal compliance costs alone for both classes of filers based on the SEC's estimated compliance costs would be nearly \$1 billion, far exceeding the economic threshold under the SBREFA.

Furthermore, we believe that the Proposing Release has significantly underestimated compliance costs.<sup>10</sup> All of the approximately 140 Society issuer members who participated in the comment letter process and that specifically weighed in on this issue indicated that their company believes that the Proposing Release significantly underestimated the implementation and ongoing compliance costs. As detailed in the Society Comment Letter, the Society believes the Commission's estimates meaningfully underestimate the costs to implement and effect ongoing compliance with the Proposed Rule, including those relating to the scope and granularity of the proposed disclosure (both within and outside of the financial statements); the requirement to disclose certain information in SEC filings without regard to materiality; the development of new systems, processes, and controls; the hiring of additional internal staff and outside consultants; and the audit-related and attestation requirements.<sup>11</sup>

To illustrate the magnitude of these anticipated additional compliance costs, the Society Comment Letter provided rough estimates from several of our issuer members across industries and sizes.<sup>12</sup> As detailed in Appendix A-2 of the Society Comment Letter, a few large cap companies estimated their costs of initial implementation to be between \$5 million and at least

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<sup>7</sup> Proposing Release PRA Table 4 at 440-41 (“Change in External Costs”). The table shows a “Current External Cost Burden” of \$3.9 billion and a “Change in External Costs” of \$6.4 billion, resulting in a requested “External Cost Burden” of \$10.2 billion, reflecting a substantial increase in estimated SEC filing disclosure compliance costs.

<sup>8</sup> Proposing Release at 373. Costs were estimated over the first six years of compliance with the Proposed Rule. For non-SRC registrants, the costs in the first year of compliance are estimated to be \$640,000 (\$180,000 for internal costs and \$460,000 for outside professional costs), while annual costs in subsequent years are estimated to be \$530,000 (\$150,000 for internal costs and \$380,000 for outside professional costs). For SRC registrants, the costs in the first year of compliance are estimated to be \$490,000 (\$140,000 for internal costs and \$350,000 for outside professional costs), while annual costs in subsequent years are estimated to be \$420,000 (\$120,000 for internal costs and \$300,000 for outside professional costs).

<sup>9</sup> Proposing Release at 432 note 1057.

<sup>10</sup> For all issuers other than smaller reporting companies, excluding assurance costs, the Proposing Release estimates initial compliance costs of \$640,000 (\$180,000 for internal costs and \$460,000 for outside professional costs) and annual ongoing compliance costs of \$530,000 (\$150,000 for internal costs and \$380,000 for outside professional costs). For accelerated filers, the Proposing Release estimates current third-party assurance costs at \$30,000 to \$60,000 (with a median of \$45,000) for limited assurance and \$50,000 to \$100,000 (with a median of \$75,000) for reasonable assurance. Large accelerated filers are expected to incur costs ranging from \$75,000 to \$145,000 (with a median of \$110,000) for limited assurance and \$115,000 to \$235,000 (with a median of \$175,000) for reasonable assurance. Proposing Release at 382-83.

<sup>11</sup> Society Comment Letter. See in particular Section I.C; Sections III and IV; and Appendix A-2 Society Member Climate-Related Disclosure and Assurance Cost Data.

<sup>12</sup> Other members provided us with the costs and/or resources associated with their current voluntary disclosures, which are informative as well, in the sense that it is clear that in light of the scope and granularity of the Proposed Rule's requirements, compliance costs will be on an order of magnitude greater than those current costs, and would far exceed the SBREFA economic threshold as a result.

\$10 million, and estimated their ongoing annual compliance costs to be between \$4 million and \$5 million. We also noted a small-cap company member’s expected initial implementation costs, which, although anticipated to be at the low end of the range based on its business model (i.e., single line of business) and thus not representative of other companies, of \$650,000 to \$1.5 million, and upwards of an additional \$650,000 per year in ongoing expenses, in addition to its current expenditures, to comply with the Proposed Rule.

Based on the foregoing figures from our members, we believe that the resulting internal compliance costs will be much greater than the nearly \$1 billion estimate (based on the SEC’s estimates, noted above), and unquestionably well in excess of the \$100,000,000 economic threshold under the SBREFA.

Furthermore, data released subsequent to the Society Comment Letter indicates that key assumptions in the Proposing Release regarding the prevalence of TCFD-aligned disclosure overestimate actual prevalence.<sup>13</sup> Notably, in October 2022, the TCFD released its 2022 Status Report,<sup>14</sup> which reaffirms that the TCFD framework is still not widely used worldwide, let alone in North America, and highlights significant variations in the prevalence and scope of disclosure across each of the 11 recommended disclosures across regions, industries, and company sizes. (We have summarized key data points from this current report in the Appendix of this letter.)<sup>15</sup> The SEC’s compliance cost and burden estimates appear to be premised on the assumption that TCFD-aligned disclosure is much more widespread than it actually is.<sup>16</sup>

The issuer input and empirical cost data included in the Society Comment Letter, as well as the information in TCFD’s 2022 Status Report, should inform the Commission’s “major rule” determination. However, even absent additional data and even assuming the SEC’s estimated compliance costs are generally accurate, the Proposed Rule would still be a “major rule” based on the SEC’s anticipated compliance costs alone.

## **II. The Procedural Protections that Accompany Major Rule Designations Are Important for Companies Subject to the Proposed Rule**

Given the significant costs that this rulemaking will impose on public companies and the economy more generally, the Society believes that the Commission should have designated the climate rulemaking as a “major rule” in the Proposing Release rather than seeking public comment on that topic.

The determination of a “major rule” under the SBREFA triggers critical procedural protections—most notably a 60-day Congressional review period before a final rule takes effect—that would help both small and large companies better prepare for initial compliance.

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<sup>13</sup> See Society Comment Letter at 23-4 and note 58.

<sup>14</sup> See TCFD, [Task Force on Climate-related Financial Disclosures 2022 Status Report](#) (Oct. 2022)

<sup>15</sup> See also Society Comment Letter pages 23-43 and Appendix A-2, which include the Society’s benchmarking of the current prevalence of TCFD-aligned disclosure and voluntary compliance with certain other requirements under the Proposed Rule (e.g., Scope 1, 2, and 3 GHG emissions disclosure and third-party attestation).

<sup>16</sup> See, e.g., *supra* note 13 and Proposing Release at 34-5 (“The TCFD framework has been widely accepted by issuers, investors, and other market participants, and, accordingly, we believe that proposing rules based on the TCFD framework may facilitate achieving this balance between eliciting better disclosure and limiting compliance costs.”)

The SBREFA also imposes additional obligations on federal agencies, which are intended to mitigate the impact of proposed rulemaking on small businesses.<sup>17</sup>

The effective date of the final rule is important to Society members because companies will need sufficient time to prepare for compliance. Given the complexity of the Proposed Rule and the associated mandates, we are concerned about the SEC's statement in the Proposing Release that compliance for some companies would begin with respect to fiscal year 2023 if the rules are finalized in 2022.<sup>18</sup> Companies would essentially need to act now (with two months left in 2022 after the closing of the reopened comment period) to take all the necessary steps internally to become compliance-ready for fiscal year 2023.

### **III. A More Reasonable Compliance Schedule Is Necessary**

As noted in the Society Comment Letter, a realistic and reasonable compliance timeline is critical to allow companies adequate time to—among other things—establish and implement the necessary processes, systems, and controls, and hire/retain adequate staffing; develop or upgrade technology to better collect and aggregate data; and retain outside consultants and other internal and external resources to effect compliance.

We therefore reiterate the importance of a sequential, layered phase-in schedule based on the degree of preparation, data, and external resources required for compliance. Our suggested schedule begins with qualitative disclosures, proceeds with quantitative non-financial statement disclosures, and then adds financial statement disclosures, if any. For your convenience, below is an updated suggested compliance schedule, which assumes a final rule in 2023.<sup>19</sup>

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<sup>17</sup> Under the SBREFA, federal agencies are required to: produce Small Entity Compliance Guides for some rules; be responsive to small business inquiries about compliance with the agency's regulations; submit final rules to Congress for review; have a penalty reduction policy for small businesses; and involve small businesses in the development of some proposed rules through Small Business Advocacy Review Panels.

<sup>18</sup> See, e.g., Proposing Release at 46.

<sup>19</sup> This schedule depicted here merely updates the schedule included in the Society Comment Letter at page 80, which assumed a final rule adoption by December 31, 2022. It is otherwise subject to the same caveats as noted in the Society Comment Letter.

Requirement	Large Accelerated Filer	Accelerated Filer	Non-Accelerated Filer	Smaller Reporting Company
Qualitative/narrative disclosures only – climate-related risks and opportunities, governance and risk management processes, targets and goals, and transition plan and annual updates	FY 2025		FY 2026	FY 2027
Scope 1 and 2 emissions disclosure	FY 2026		FY 2027	FY 2028
Climate-related financial statement disclosures	FY 2027		FY 2028	FY 2029
Scope 3 emissions estimates	FY 2028		FY 2029	Exempt
Attestation report – limited assurance	FY 2028	FY 2029	N/A	N/A
Attestation report – reasonable assurance	FY 2029	FY 2030	N/A	N/A

If a final rule is not adopted in 2022, we respectfully request the timelines be further adjusted as illustrated above to account for such delay.

Thank you for your consideration.

Respectfully submitted,

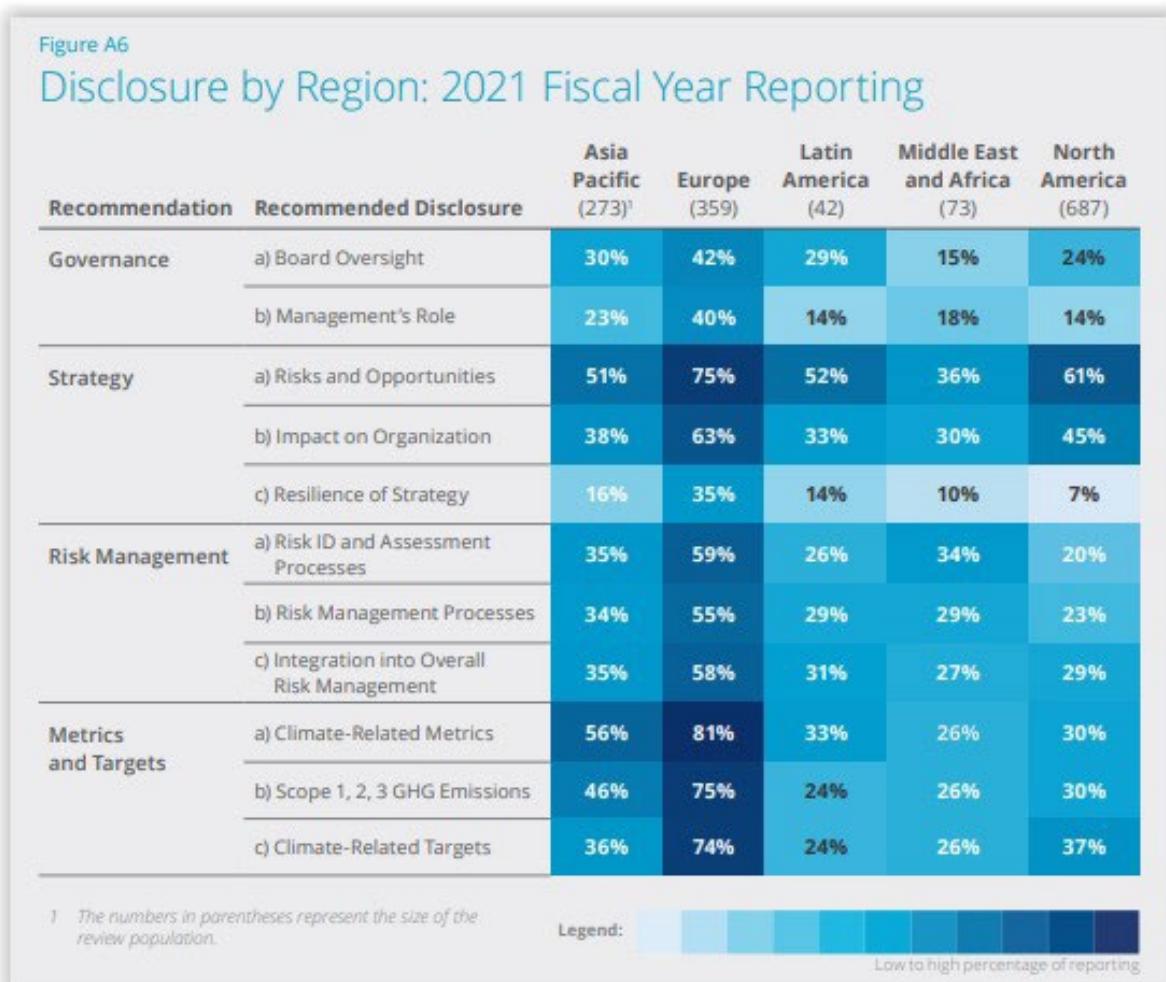


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cc: Chair Gary Gensler  
Commissioner Hester Peirce  
Commissioner Caroline Crenshaw  
Commissioner Mark Uyeda  
Commissioner Jaime Lizárraga

## Appendix

Based on a review of 1,434 companies that reported in each of 2019, 2020, and 2021, **only 4% of companies** disclosed across all 11 recommended disclosures.<sup>20</sup> On average, companies addressed **4.2 of the 11 recommended disclosures**.<sup>21</sup> The disclosure rate among North American companies specifically averaged **29% across all 11 recommended disclosures**, ranging from a low of 7% disclosing of the resilience of the company's strategy under different climate-related scenarios to a high of 61% disclosing information about climate-related risks and opportunities in their 2021 reports.<sup>22</sup> The jurisdictional breakdown by TCFD disclosure recommendation is set out here:



Logically, disclosures further varied in frequency and focus across the eight industries reviewed, with Energy companies having the highest disclosure rate across all 11 recommendations (43%)

<sup>20</sup> TCFD 2022 Status Report at 5. 40% disclosed in line with at least five, and 80% disclosed in line with at least one, of the recommended disclosures.

<sup>21</sup> TCFD 2022 Status Report at 6.

<sup>22</sup> TCFD 2022 Status Report at 5, 16.

compared to, for example, Technology and Media, which had the lowest disclosure rate across all 11 recommendations (15%).<sup>23</sup>

Figure A3  
**Average Percentage of Disclosure by Industry**

Industry	Percent
Energy	43%
Materials and Buildings	42%
Banking	41%
Insurance	41%
Ag., Food, and Forest Products	37%
Consumer Goods	33%
Transportation	32%
Technology and Media	15%

Also, importantly, as was the case with the results revealed in the prior year TCFD report, the rate of TCFD-aligned reporting generally corresponds with company size, with 49% of companies with market caps greater than \$12.2B making TCFD-aligned disclosure compared to 37% of companies with market caps of \$3.4B–\$12.2B, and 29% of companies with market caps below \$3.4B.<sup>24</sup>

Figure A7  
**Average Percentage of Disclosure by Company Size**

Market Capitalization	Percent
<\$3.4B	29%
\$3.4-12.2B	37%
>\$12.2B	49%

Notably, the SEC estimated that of the 6,220 domestic registrants during calendar year 2020 that would be subject to the Proposed Rule, approximately 50% were smaller reporting companies and 58% were non-accelerated filers.<sup>25</sup>

<sup>23</sup> TCFD 2022 Status Report Figure A3.

<sup>24</sup> TCFD 2022 Status Report Figure A7.

<sup>25</sup> See Proposing Release at 295.