June 16, 2022

VIA ELECTRONIC SUBMISSION

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

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

Ladies and Gentlemen:

The Financial Services Forum (the "Forum")[1] appreciates the opportunity to submit this letter to the Securities and Exchange Commission (the "SEC") on its proposed rule on the enhancement and standardization of climate-related disclosures for investors (the "Proposal"). The Proposal is relevant to each of our member institutions, the eight U.S. global systemically important bank holding companies (the "U.S. GSIBs"), as public companies, and as part of the key role played by our member institutions in the broader financial system and economy by facilitating capital formation and the efficient allocation of capital to companies. As a result, the Forum considers the Proposal through this unique lens.

As an initial matter, we wish to emphasize that we support the objective of providing investors with consistent, comparable and decision-useful information related to climate risk. Our member institutions understand investors' demands for more transparent climate-related information and have voluntarily disclosed much of the information investors have requested, including greenhouse gas ("GHG") emissions information.

For instance, all eight of our member institutions have voluntarily disclosed information about climate-related financial risk exposure in public reports consistent with recommendations from

[1] The Financial Services Forum is an economic policy and advocacy organization whose members are the chief executive officers of the eight largest and most diversified financial institutions headquartered in the United States. Forum member institutions are a leading source of lending and investment in the United States and serve millions of consumers, businesses, investors, and communities throughout the country. The Forum promotes policies that support savings and investment, deep and liquid capital markets, a competitive global marketplace and a sound financial system.

the Task Force on Climate-Related Financial Disclosures (the "TCFD"). These reports are specific to each of our member institutions, consistent with the flexibility inherent in the TCFD framework, and include plans to address climate-related risk, as well as descriptions of how the institution has incorporated climate-related risk into its risk management and governance processes. In addition, many of our member institutions make climate-related disclosures in connection with their participation in a number of additional voluntary initiatives. All of our member institutions also have voluntarily disclosed GHG emissions information through CDP, formerly known as the Carbon Disclosure Project. Many of our member institutions have used the well known Global Reporting Initiative ("GRI") standards and/or the Sustainable Accounting Standards Board ("SASB") standards when preparing their voluntary disclosures.

Further, all of our member institutions have announced support for goals relating to reducing GHG emissions. In some cases, our member institutions have set broad firm-level net-zero ambitions, while in other cases, they have set targeted goals for reducing direct emissions or Scope 3 emissions for certain sectors. Each member institution has carefully set these targets and goals based on what is most relevant to the institution's contribution to GHG emissions and its measurement capabilities.

The U.S. GSIBs are leaders in the climate-related disclosure space and are supportive of carefully calibrated regulations that promote progress toward more decision-useful climate-related disclosures. To that end, we believe key elements of the Proposal should be recalibrated to better serve the SEC's objective of producing more consistent, comparable and decision-useful climate-related disclosures for investors, as described throughout our letter. Below we first summarize our key recommendations for rule revisions that would better tailor the rule to achieve the SEC's policy objectives, followed by our identification of key overarching areas for improvement in the Proposal.

I. Summary of Key Recommendations

The attached Annex includes all of our specific recommendations that we believe would make the final rule both more workable for registrants and decision-useful for investors. Here, we briefly summarize the key recommendations from the Forum's member institutions, each of which is discussed in more depth in the Annex:

- **Financial Statement Metrics**. The proposed financial statement metrics disclosures would not be feasible for registrants to implement, as described in more detail in section I.A of the attached Annex. The difficulty in calculating the specific impact of climate-related activities and events on particular line items with any reasonable level of confidence would make it nearly impossible for registrants to comply with the Proposal. Given the level of interpretation that would be required, we expect the outcome would be disclosure of large amounts of extremely granular data that is unlikely to be comparable or to add value to the users of financial statements. Additionally, this information would not be consistent with, or indicative of, how companies monitor or manage climate risk or decision-useful for investors.

The Forum recommends that the final rule remove the required financial statement metrics disclosures. Alternatively, we recommend that the final rule instead re-locate primarily high-level qualitative disclosure of the financial impacts of, and expenditures related to, severe weather events and transition activities, qualified by materiality, alongside the other proposed climate-related disclosures or in the Management Discussion and Analysis ("MD&A") section of annual reports. If the final rule retains line item disclosures, we recommend some modifications to limit the disclosures to those that will be workable for registrants, as explained in more detail in section I.B of the attached Annex, and that the SEC not proceed with the requirement until sufficient accounting standards (e.g., for transition activities) have been developed through an appropriate standards-setting process, such as in coordination with the Financial Accounting Standards Board ("FASB").

- **Scope 3 Emissions**. As explained in more detail in section II.A of the attached Annex, the Proposal's Scope 3 emissions disclosure requirements are expected to be difficult for registrants to produce on a reliable, comparable or decision-useful basis, particularly financial institutions with a high proportion of "financed emissions." Because Scope 3 emissions are based on (i) third-party data that is not necessarily complete or reliable and (ii) calculation methodologies that are still developing for certain types of financed emissions, mandatory disclosure of Scope 3 emissions is premature. Much of the data that is necessary to produce these disclosures must be gathered directly from clients, is incomplete or unreliable and includes many estimates and assumptions. For financial institutions in particular, the proposed requirement would result in overly broad Scope 3 disclosures that will not be indicative of the institution's transition risk or provide decision-useful information for investors. The Scope 3 emissions disclosure requirement could also have unintended consequences that are detrimental to capital formation because public financial institutions will need to collect emissions information from customers in order to comply with the required disclosures, which could result in those customers seeking capital from private companies not subject to these new rules.

  We recommend that the final rule limit the climate-related targets and goals for which disclosure of Scope 3 emissions is required to only those that are material, publicly announced, and specifically refer to Scope 3 emissions. We recommend that the final rule also remove the prong that would require disclosure of Scope 3 emissions not included in a target if material. If this requirement is nonetheless retained, we recommend that the final rule clarify that it requires disclosure of only material categories of Scope 3 emissions and only material sectors within those categories, using a traditional materiality standard, in a report that is furnished rather than filed.[2] This clarification would avoid requiring disclosure of non-material Scope 3 emissions for which reliable data and well-developed methodologies do not exist. Finally, for reasons discussed in more detail in section V.A of the attached Annex, we also recommend that

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[2] As discussed in more detail in section V of the attached Annex, we recommend that all required climate-related disclosures be made in a new form that is "furnished" rather than "filed."

the final rule explicitly allow for Scope 3 emissions disclosures to be based on lagging information.

- **Scenario Analysis**. Forum member institutions are regulated by U.S. banking regulators, which are currently developing climate scenario analysis guidance. Because our member institutions have begun conducting exploratory scenario analysis exercises and will soon likely be required to do so by the federal banking regulators, the Proposal would require our member institutions to disclose details regarding these exercises.[3] As risk management tools, scenarios considered are specific to each company and its unique risk exposures, so these disclosures are unlikely to be comparable across companies. Due to climate-related data gaps and the nascent state of methodologies needed to conduct scenario analysis, disclosing these exercises on SEC forms with potential U.S. securities law liability is premature, as discussed in more detail in section III.A of the attached Annex. Furthermore, we believe the banking regulators are best positioned to oversee development of climate scenario analysis exercises. Finally, in particular for financial institutions, detailed disclosure of the assumptions, inputs and outputs of scenario analysis exercises are likely to be proprietary business information and potentially confidential supervisory information.

  Accordingly, we recommend that the final rule require only summary disclosures related to scenario analysis to ensure that registrants disclose only material non-confidential information that is not overly prescriptive. Relatedly, in response to Request for Comment 30, the SEC should not require registrants to follow certain publicly available scenario models for scenario analysis, instead deferring to bank regulatory guidance or other industry specific guidance as applicable to other types of registrants as to which scenarios are appropriate. Lastly, given the nascent state of climate-related data and rapidly evolving methodologies required for these exercises, we think an additional safe harbor specifically for scenario analysis disclosures is warranted.

- **Phase-In Periods**. As discussed in more detail in section IV.A of the attached Annex, the contemplated phase-in periods for climate-related disclosures in the Proposal are far too short and do not adequately account for the tremendous amount of work registrants will need to do to prepare for compliance. In particular, the proposed financial statement

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[3] *See* OCC, Principles for Climate-Related Risk Management for Large Banks, “Scenario Analysis” principle (Dec. 16, 2021), https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-62.html [hereinafter, “OCC Principles”] (describing that “[c]limate-related scenario analyses should be subject to oversight, validation, and quality control standards that would be commensurate to their risk”); FDIC, Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions, 87 Fed. Reg. 19507 (Apr. 4, 2022) [hereinafter, “FDIC Principles”] (Explaining that “the draft principles are intended to support the use of scenario analysis as an emerging and important approach for identifying, measuring, and managing climate-related risks”); Statement of Chair Jerome H. Powell on the Financial Stability Oversight Council’s (FSOC) Report on Climate-Related Financial Risk (Oct. 21, 2021), https://www.federalreserve.gov/newsevents/pressreleases/other20211021c.htm (stating “[w]e at the Fed are developing a program of scenario analysis to evaluate the potential economic and financial risks posed by different climate outcomes.”).

> metrics disclosures and attestation requirement would not be practicable within the proposed transition period.
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> We recommend that the final rule allow at least 2 years after the effective date before any new disclosure requirements are implemented. At a minimum, we request that the final rule provide at least 3 years for registrants to comply with any financial statement metrics disclosures and attestation requirement retained in the final rule. We also suggest an additional transition period for newly public companies to avoid any unintended adverse effect on companies considering an initial public offering in the United States.

As noted above, the Annex includes our additional recommendations as well, including regarding the form on which the disclosures should be made, the scope of disclosures of climate-related targets and goals, the attestation requirement, disclosures on risk management and governance, the appropriate organizational boundaries for a registrant, and other topics.

II. The Proposal's Approach to Climate Disclosure Could Be Improved

In addition to our specific recommendations described above and in further detail in the Annex, we identify here ways in which the Proposal's general approach to climate-related disclosures could be improved, and these concerns underpin and animate our specific recommendations.

The Proposal should account for the near-term state of data and methodological challenges.

The Proposal does not adequately account for significant gaps in data and methodologies in the climate risk space. The current difficulty with quantifying climate-related information presents extra challenges when coupled with the possibility of U.S. securities law liability for disclosures based on that information, particularly the proposed financial statement metrics and GHG emissions disclosures. The data necessary for identifying, measuring and assessing climate-related risks is currently incomplete and unreliable.[4] In particular, calculating Scope 3 emissions for financial institutions is heavily reliant on information from clients, where available, and proxy data, where unavailable. Further, the models and methods used to assess climate-related risks are relatively new and continue to evolve.[5] Therefore, registrants would

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4 *See, e.g.,* Financial Stability Oversight Council, Report on Climate-Related Financial Risk, at 23 (Oct. 2021), https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf [hereinafter, "FSOC Report"] (concluding that "[w]hile significant data related to climate change already exists, there remain gaps in connecting the science of climate change to financial risk assessments and real-world economic impacts.") These challenges are discussed in the FSOC Report as examples of challenges that *regulators* face, but we believe they are also applicable to companies.

5 *Id.* at 59 (explaining that, for example "increased analytical capacity and expertise is needed to generate predictions for both chronic risks, like sea-level risk, and acute risks, like wildfires or extreme rainfall events; damage functions for how physical risk translates to property damage; and models that translate those property damages to financial losses"); OCC Principles, *supra* note 3, "Strategic Planning" principle (stating that the OCC "recognizes that the incorporation of material climate-related financial risks into various planning processes is iterative as measurement methodologies, models, and data for analyzing these risks continue to evolve and mature over time.").

need to use speculative estimates and rely on assumptions in order to make some of the required quantitative disclosures, undermining the utility of the information for investors—as it will likely be incomparable, inconsistent and unreliable—while creating significant costs and potential liability for registrants. A more principles-based approach, and other changes discussed in our recommendations in the attached Annex, would help to address these issues.

The Proposal should avoid disincentivizing initial public offerings, use of exploratory risk management tools and ambitious climate-related targets and goals.

Due to the highly expensive nature of the prescriptive requirements, the Proposal is likely to have an adverse effect on capital markets and lending activity and also discourage companies from setting carbon emissions reduction targets. Because of our member institutions' experience working with private companies considering financing options, we are particularly concerned about the significant deterrent effect that the Proposal, if finalized, could have on companies considering an initial public offering in the United States. More important than the anticipated costs to individual registrants, which are expected to be quite high, is the potentially significant detrimental impact that the Proposal could have on capital formation and the broader economy through the added costs associated with requesting and providing climate-related data.

A more principles-based approach in line with current Regulation S-K requirements would achieve decision-useful information for investors.

We are concerned that the level of prescriptiveness in the Proposal would result in disclosure of significant amounts of non-material information and would not achieve the SEC's objective of providing decision-useful information for investors. The proposed disclosures represent a significant departure from the types and amount of information required by the SEC on other risk topics. In our view, a principles-based approach is needed to meet the SEC's objective of providing decision-useful information to investors about material climate-related risks for the following reasons:

First, a more principles-based approach would result in less non-material information for investors to wade through, thereby avoiding information overload. Specifically, the prescriptiveness of the Proposal could result in information overload to investors,[6] as registrants will need to include more disclosures in their Form 10-K on climate-related topics than for any other specific topic. The proposed disclosures would not necessarily be cabined by the traditional materiality standards that investors are familiar with and may not ultimately be decision-useful. Further, the prescriptive prominence of this information relative to other matters that may be of equal or greater importance to the registrant would make it difficult for investors to assess the relevance of the information to the registrant. While the Forum understands that institutional investor and other stakeholder demands have driven parts of the

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6 *See, e.g.*, SEC Chair Mary Jo White, The Importance of Independence (Oct. 3, 2013), https://www.sec.gov/news/speech/spch100113mjw# (stating "[w]hen disclosure gets to be too much or strays from its core purposes, it can lead to 'information overload' – a phenomenon in which ever-increasing amounts of disclosure make it difficult for investors to focus on the information that is material and most relevant to their decision-making as investors in our financial markets.").

Proposal, the proposed disclosures far exceed those demanded by most investors, particularly retail investors, in terms of quantity and level of granularity. Further, we believe if the Proposal were finalized in its current form, it would generate costs of compliance that far exceed its benefits to the average, reasonable investor, frustrating the stated goals of the Proposal.

Second, a more principles-based approach is needed to facilitate (rather than stifle) innovation and organic development of best practices as knowledge grows, modeling capabilities mature and data reliability and availability improves. With the current state of voluntary climate-related disclosure guidance, companies' disclosures adapt along with changing information and best practices. The SEC's aim of consistency and reliability would be better served by allowing standards to develop over a period of time and with enough flexibility for institutions to evolve their approach.

We believe the SEC's goals would be better served by starting with a more flexible, principles-based approach, which would more effectively achieve the SEC's goals while avoiding unintended consequences. While the Forum applauds the SEC's approach of drawing specifically from TCFD recommendations, we recommend that the final rule also adopt the flexible structure of the TCFD framework rather than simply importing voluntary recommendations into the regulatory text.[7]

The final rule should avoid conflicting with the rulemaking process and guidance of other financial regulators.

Flexibility is needed to address the nuance of different industries, and financial institutions in particular, which are regulated by several federal government agencies. In applying to all public companies, the Proposal covers a large swath of industries, and would benefit from a more principles-based approach to account for the nuances and distinctions in how the rule would be implemented by different types of businesses. For example, the Proposal's disclosure requirements around governance and risk management are far more prescriptive and detailed than the climate-related risk management guidance that has been proposed for large financial institutions by the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC").[8]

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7 *See* SEC, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21334, 21343–44 (Apr. 11, 2022). While detailed, the TCFD framework is flexible by design, allowing for adaptation as knowledge grows and capabilities develop, as well as well tailored disclosures that are most relevant for each company's unique risk exposure and investors. For example, TCFD recommendations included transition plans for the first time in 2021. *See generally* TCFD, Guidance on Metrics, Targets, and Transition Plans (Oct. 2021), https://assets.bbhub.io/company/sites/60/2021/07/2021-Metrics_Targets_Guidance-1.pdf [hereinafter, "TCFD Guidance on Metrics, Targets, and Transition Plans"]. The Proposal goes beyond TCFD recommendations in some cases, notably by requiring Scope 3 disclosures for some registrants and mandating line item financial impacts disclosures.

8 *See* OCC Principles, *supra* note 3; FDIC Principles, *supra* note 3.

Coordination with and appropriate deference to other financial regulators would avoid the unintended consequences of policymaking by disclosure. Many parts of the Proposal suggest, in effect, best practices rather than simply eliciting disclosure. Given the broad scope of the SEC's Proposal, it is essential that the SEC avoid inadvertently driving company behavior through disclosure in ways that create negative unintended consequences. For example, the granular disclosures regarding how a registrant's management oversees and considers climate-related financial risk in its business operations presumes that certain practices are better than others, which may conflict with the view of bank regulators. Similarly, the disclosures required of a board of directors' decision-making process could interfere with a board's ability to oversee the company. In this way, the final rule would set a de facto standard regarding climate-related behavior at companies, rather than serving simply as a disclosure requirement. Such a de facto standard could conflict with the approach taken by other relevant regulators, a result that could be mitigated with more flexibility in the final rule and more coordination with and deference to other regulators during the rulemaking process. It is also premature given the current state of climate-related accounting standards and emissions calculation methodologies, which are still developing, and prevent the rule's implementation from evolving as company practices and investor demands also evolve.

The Proposal should adhere more closely to the SEC's traditional materiality standard.

The Proposal in many places departs from the SEC's usual standard of materiality for disclosure requirements and recommendations previously made by the Financial Stability Board's ("FSB") Enhanced Disclosure Task Force.[9] The SEC frequently requires disclosure of information only when it is material, defined as when "there is a substantial likelihood that a reasonable investor would consider it important" in making an investment or voting decision, or it would have "significantly altered the total mix of information made available."[10] This standard applies to most disclosure rules, is guided by a wealth of case law and is well understood by registrants and investors. The Proposal departs from this well-known standard at times, including by requiring disclosure of the impact of climate-related risks on line items of registrants' consolidated financial statements if the impact is above a 1% threshold.[11] Given the range of line item values for our member institutions, 1% is likely to be immaterial to investors.[12] Similarly, the Proposal requires all registrants to disclose Scope 1 and 2 emissions, regardless of materiality, and will require some registrants to disclose Scope 3 emissions that are not material

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[9] *See* FSB Publishes Fourth EDTF Report on Bank Risk Disclosures (Dec. 7, 2015), https://www.fsb.org/2015/12/fsb-publishes-fourth-edtf-report-on-bank-risk-disclosures/.

[10] 17 CFR 240.12b-2 (definition of "material"). The SEC further notes that the materiality standard is similar to what is required when preparing the MD&A section in a registration statement or annual report. *See* 87 Fed. Reg. at 21351–52 n.209.

[11] Proposed 17 CFR 210.14-01 and 14-02.

[12] On average, for all of our member institutions' 2021 income statement line items, 1% would equate to roughly 0.7% of net income. Further, ten percent of the time income statement line items would amount to less than 0.02% of net income, which is roughly 30 times less than the size of the typical line item. Marketing, Professional Fees and Business Development are examples of line items where 1% would be an exceedingly small figure that would be difficult to analyze in practice.

if used as part of climate-related targets or goals.[13] The Proposal also would require certain disclosures regarding a registrant's use of scenario analysis and climate-related targets and goals, regardless of materiality. Requiring disclosure of immaterial information will result in substantial added costs for registrants that yield uncertain benefits, including information "overload," and will be more confusing than helpful and not decision-useful for investors.[14]

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Thank you for considering these comments. Please feel free to contact the undersigned (KFromer@fsforum.com) with any questions.

Respectfully submitted,

Kevin Fromer
President and CEO
Financial Services Forum

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13 Proposed 17 CFR 229.1504.

14 This comment letter does not address cost-benefit analysis specifically.

Annex: Recommendations for the SEC

Our following key observations and recommendations focus on striking a balance in the final rule: achieving the goals of enhanced climate disclosure—to produce more decision-useful information for investors—in a more flexible and workable way while also preserving a cornerstone of our economy—efficient capital formation:

1. The final rule should remove or reduce climate-related disclosures in financial statements and use traditional materiality standards applied today for those impacts that should be disclosed.

2. The final rule should require disclosure of only the explicit Scope 3 emissions included in material, publicly announced climate-related targets.

3. The SEC should defer to the banking regulators to guide banks on the use of scenario analysis and adopt separate safe harbors from liability.

4. The final rule should incorporate longer phase-in periods.

5. The final rule should require climate-related disclosures on a new form and explicitly allow for Scope 3 emissions disclosures to be made on a lagging basis.

6. The final rule should require disclosure of only material, publicly announced, firm-level climate-related targets and goals.

7. Scope 1 and Scope 2 attestations should be voluntary or require only limited assurance.

8. The required risk management and governance disclosures should be more principles-based in nature.

9. The final rule should allow registrants flexibility in establishing organizational boundaries.

10. The final rule should include certain additional clarifications and changes (e.g., around time horizons and carbon offsets).

I. The final rule should remove or reduce climate-related disclosures in financial statements and use traditional materiality standards applied today for those impacts that should be disclosed.

For the reasons discussed in more detail above and below, we recommend that the final rule[15] remove the proposed disclosures from the financial statements. If this information must be retained in some form, we recommend that the SEC instead require primarily high-level qualitative disclosure of financial impacts and expenditures in Regulation S-K or the MD&A, subject to a traditional materiality standard. If the final rule were to retain line item disclosures, we also suggest a number of modifications to narrow those disclosures to those that would be most decision-useful for investors, including coordination with FASB to further develop climate accounting standards (e.g., for transition activities).

A. Challenges and Concerns

1. *The proposed Financial Impact and Expenditure Metrics would not be feasible for registrants, given the lack of climate accounting and auditing standards (e.g., for transition activities).*[16]

The current Proposal would require novel climate accounting, which would require a significant amount of data that would result in disclosure of a large amount of information that is unlikely to be comparable among companies, is likely to be confusing to investors given its unwarranted prominence and is unlikely to be consistent with how management evaluates the impact of climate-related risk. Accounting standards that specifically account for transition activities would be needed in order to produce the proposed financial statement metrics on a line item basis. It is not clear, however, how to apply the concepts in the Proposal when calculating the proposed Financial Impact and Expenditure Metrics. Because there is not currently sufficient guidance regarding how to implement these disclosures in practice, it would be unworkable for registrants to try to make these disclosures.

Moreover, FASB rather than the SEC may be better suited to develop climate accounting standards. The SEC requires that all financial statements be produced in accordance with U.S. Generally Accepted Accounting Principles ("U.S. GAAP") because statements prepared using the same accounting standards are comparable and reliable. FASB establishes and interprets U.S. GAAP for companies in the United States and is a well known authority on developing

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15 The Proposal would amend Regulation S-X to require disclosure of (i) the financial impact of severe weather events and other natural conditions ("climate-related events") and transition risks on the line items of a registrant's consolidated financial statements ("Financial Impact Metrics"); (ii) expenditure and capitalized costs incurred to mitigate climate-related events and exposure to transition activities ("Expenditure Metrics"); and (iii) financial estimates and assumptions impacted by such climate-related events and transition activities (including non-material estimates) (together, the "S-X Disclosures"). Proposed 17 CFR 210.14-02(c)-(h). With respect to the Financial Impact and Expenditure Metric requirements, the SEC proposed a one percent quantitative threshold, rather than a broad materiality threshold, to determine what information is required to be disclosed. Proposed 17 CFR 210.14-02(b).

16 This section is in part responsive to Request for Comment 53.

accounting standards. The SEC and our member institutions look to FASB's expertise in developing such accounting standards and believe the importance and complexity of climate-related risks warrants appropriately-developed and tested accounting standards. We are concerned that the SEC prematurely imposing novel climate accounting concepts would unnecessarily stifle more organic development of best practices in climate accounting that would be workable for all registrants and financial institutions in particular.

Including Financial Impact and Expenditure Metrics in financial statements would also require them to be audited, which requires appropriate standards for auditors specific to climate-related financial statement metrics. Because there are currently no standards for auditing the required financial statement disclosures, this presents serious questions regarding feasibility for registrants. It would also require registrants to develop related internal controls over financial reporting related to these metrics from the beginning of the reporting period, as some of these disclosures would require activity-based information as opposed to spot balances that can be collected at the end of the reporting period. This reality would make historical disclosures for years prior to the effective date of the final rule nearly impossible for registrants to produce.[17]

2. *The Proposal does not clearly define "transition activities" or "severe weather events" in a way that would make the proposed S-X Disclosures feasible.*[18]

We do not believe the required Financial Impact and Expenditure Metrics disclosures as written would be feasible for registrants to provide or decision-useful for investors. In this section, we first discuss transition activities and then severe weather events.

a. Transition Activities

Financial impacts and expenditures related to transition activities present additional challenges that are not addressed in the Proposal. The Proposal describes transition activities as "any efforts to reduce GHG emissions or otherwise mitigate exposure to transition risks."[19] Because activities that reduce or otherwise mitigate exposure to transition risks may also have other purposes, it is unclear what would constitute a "transition activity" for these disclosures.

We foresee difficulty in disaggregating the financial impact of, and expenditures related to, transition activities from other activities that occur simultaneously. As raised in Request for Comment 60, a registrant may not be able to quantify and provide the proposed disclosure when the impact may be the result of a mixture of factors. For example, companies may encounter a new regulation, such as a carbon price, after which many activities will occur that will impact financial statement line items. Some of those activities should be considered transition activities, while others should not be. Another example is a company replacing a gas-powered auto fleet with electric vehicles. The vehicles being replaced may be at the end of their useful

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[17] *See* Proposed 17 CFR 210.14-01(d).

[18] This section is in part responsive to Requests for Comment 59, 60, 61, 63 and 64.

[19] Proposed 17 CFR 210.14-02(d).

life and would be replaced anyway. Should the entire cost of replacement be considered a transition activity metric or just the difference between the cost of electric vehicles and gas-powered vehicles? It is also unclear to what extent a company should take into account the intent of an expenditure when identifying an expenditure as a "transition activity." For example, a company may choose to build a more energy-efficient building as a cost saving measure instead of for transition purposes.

This ambiguity may result in differences between what is considered a transition activity from company to company, resulting in disclosures that are not likely to be useful to investors because of a lack of comparability. Rather than allow a registrant to make a reasonable estimate in situations where disaggregation would not be practicable, we recommend that the final rule remove the requirement to disclose Financial Impact and Expenditure Metrics for transition activities at a minimum.[20]

Disaggregation would be made more challenging for financial institutions that are subject to other requirements with respect to financial statement disclosures. For example, banks must include expected credit losses using FASB's Current Expected Credit Loss standard ("CECL") in their financial statements. CECL requires banks to use available information and "significant factors" relevant to assessing the collectability of cash flows. Climate-related risks may be included as a component of risk assessment underlying the collectability of future cash flows but may not be identified as a significant factor. Because CECL does not require climate-related risks to be isolated as a significant factor, our member institutions do not currently have the capabilities to disaggregate the impacts of climate-related risks and would have to build out the systems and processes to do so.

As an example, disclosure of the impact of identified climate-related risks on financial statement metrics would require registrants to consider future climate-related risks that may occur beyond the time periods for which they currently evaluate risks.[21] Specifically, CECL requires the use of a "reasonable and supportable forecast period," which may be shorter than the time horizons a bank uses to evaluate climate-related risks. CECL requires a bank to revert to unadjusted historical loss information for risks beyond the reasonable and supportable forecast period, so including transition events and activities further in the future would not be permitted using CECL, and this part of the Proposal would not be feasible for registrants that must use CECL for loss estimation, including our member institutions. If the SEC expects future climate-related risks beyond the reasonable and supportable forecast period to be included in financial statement disclosures, there would be no standardized methodology for including climate-related risks in loss estimation processes, so the resulting disclosures would be neither consistent nor comparable.

We do not believe these difficulties with disaggregation are unique to our member institutions. For example, the Federal Reserve Board, when evaluating stress testing results, is not able to, and does not require financial institutions to, disaggregate the impacts to the financial

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[20] This is in part responsive to Requests for Comment 60 and 61.

[21] Proposed 17 CFR 210.14-02(i).

statements on a line-by-line basis. Requiring this of companies for climate-related events and activities is likely even more challenging and difficult to administer in a way that would produce valuable and decision-useful information.

b. Severe Weather Events[22]

The Proposal would require disclosure of the "financial impacts of severe weather events and other natural conditions" and "expenditure to mitigate risks of severe weather events and other natural conditions" if those impacts were 1% or greater to any line item.[23] The Proposal does not, however, further define the term "severe weather event" or limit in any way the scope of this disclosure item, other than by providing some broad examples such as "flooding" and "wildfires." It is therefore ambiguous whether these events are actually related to climate change, in a departure from the stated goal of the Proposal to address climate-related risk. We note that, to the extent a severe weather event or other natural condition has a material impact on financial results, registrants are already required to disclose the impact in MD&A. The effect of the proposed severe weather events disclosures, therefore, would be to capture non-material weather events that are not necessarily linked to climate change. We recommend that the final rule clarify the definition of weather events to avoid overly broad disclosures that are not decision-useful or are unrelated to climate change.

3. *A numeric materiality threshold will not result in decision-useful information for investors.*

Under the Proposal, every registrant would have to disclose these impacts for every line item when the impact is one percent or greater of the total line item for the relevant fiscal year.[24] This would require a determination of whether the one percent threshold is met, which would require setting up additional extensive internal control processes to account for climate disclosures. We do not believe disclosure by line item is operable because registrants generally are not able to disaggregate climate-related financial impacts by financial statement line item given the number of variables and assumptions involved. Moreover, to determine that severe weather events and transition activities did not have a 1% or greater impact on an individual line item would require a degree of certainty in the data and calculations that is not realistic given the current state of data and quantification methods.

The Proposal points to several examples of other bright-line thresholds to support its 1% threshold for line item disclosures, but none of the examples cited are analogous to the proposed requirement to disclose impacts that are 1% or greater of individual line items.[25] For example, the 1% threshold regarding disclosure of excise taxes if equal to 1% or more of total sales and revenues would not require determining whether the threshold is met for an individual line

[22] This is in part responsive to Request for Comment 64.

[23] Proposed 17 CFR 210.14-02(c), (e).

[24] Proposed 17 CFR 210.14-02(b).

[25] 87 Fed. Reg. at 21366 n.347.

item.[26] The Proposal also cites to the requirement to disclose open option contracts by management investment companies using a 1% threshold, but that is for net asset value rather than individual line items. Similarly, the Proposal's example of related-party transactions disclosures that exceed a certain dollar value or 1% of a smaller reporting company's ("SRC") total assets would not require calculations of individual line item impacts and only applies to SRCs.[27] None of the Proposal's examples of bright-line thresholds would require equally challenging processes as the proposed 1% threshold for financial statement line item disclosures.

Even if the SEC were to raise the 1% threshold for disclosure, this would not address our fundamental concerns with the proposed approach. Registrants cannot know in advance what the amounts recorded in any particular line item will be. As a result, registrants would need to build internal controls to determine on an extremely granular level (potentially invoice by invoice, or even within sub-items of invoices) to track whether items are due to severe weather events or transition activities. Development and implementation of those controls would be extremely challenging and result in disclosure that is not decision-useful to investors.

Accordingly, these requirements are an example of a significant added cost that would not necessarily produce more reliable or decision-useful information or otherwise benefit investors. Our member institutions disclose line items on their consolidated financial statements that range in value. A 1% threshold on those line items would range from, for example, $3 million to $4 billion. 1% of some line items, such as Marketing, Professional Fees and Business Development, would amount to less than 0.02% of net income, which would be insignificant for investors and difficult for registrants to analyze. The 1% threshold, therefore, would yield potential disclosure of inconsequential and certainly immaterial items.

Notwithstanding our recommendation below that the final rule remove the proposed S-X Disclosures altogether, to the extent some version of these requirements remain in the final rule, in response to Request for Comment 66, we do not believe the proposed threshold is appropriate; we recommend that a qualitative materiality threshold rather than a low (or high) quantitative threshold be adopted, as suggested in Request for Comment 68 and discussed further below.

4. *Proposed disclosure of estimates and assumptions would result in disclosure of non-material information that is not consistent or comparable.*

The Proposal would require registrants to disclose impacts on estimates and assumptions used to produce financial statements from "exposures to risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions" and "risks and uncertainties associated with, or known impacts from, a potential transition to a lower carbon

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[26] 17 CFR 210.5-03.1(a).

[27] 17 CFR 229.404(d).

economy or any climate-related targets disclosed by the registrant."[28] The Proposal makes clear that any such impacts would need to be disclosed, regardless of materiality.

This requirement will in many cases result in a large volume of non-material disclosures of small changes to estimates and assumptions that do not meaningfully affect the financial statements. This would even include impacts below the 1% threshold the SEC proposed in other parts of proposed 17 CFR 210.14-02 of Regulation S-X.

B. Recommendations[29]

We recommend that the final rule remove the required S-X Disclosures. If this information must be retained in some form, we recommend that the information elicited by the proposed S-X Disclosures instead be re-located outside of audited financial statements, either alongside the other climate-related disclosures required by the amended Regulation S-K or in MD&A.

If the SEC declines to adopt our suggested approach to the S-X Disclosures despite the concerns raised above, we recommend limiting the disclosures to the information that registrants are able to produce and that would be decision-useful for investors in the following ways:

- If the SEC ultimately incorporates these disclosures on a line item basis, we recommend that the SEC delay requiring these disclosures until an appropriate standards-setting process has been completed, such as by or in coordination with FASB.

- Given the added challenges of disaggregating the impacts of transition activities from other activities, at a minimum disclosure of financial impacts of, and expenditures related to, transition activities should not be included in the final rule, as discussed as an alternative in Request for Comment 61.

- Furthermore, we do not believe S-X Disclosures should capture the impact of severe weather events or other natural conditions that are not caused by climate change. If the "severe weather event" portion of the S-X Disclosures is retained in the final rule, we recommend adopting a definition of climate-related severe weather events that limits disclosure to impacts of weather events that are outside of normal expectations, such as, for example, 50-year floods or hurricanes of only the most severe categories.

- We recommend adjusting the one percent threshold to a non-quantitative materiality threshold instead. We believe a qualitative determination of materiality would be sufficient to capture the material impacts to financial statements that would be decision-useful to investors without adding significant costs that yield uncertain benefits.

- Finally, we recommend that the final rule clarify that the proposed historical period disclosures would not apply to fiscal years prior to the effective date of the final rule.

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[28] Proposed 17 CFR 210.14-02(g), (h).

[29] This section is in part responsive to Requests for Comment 61, 66 and 68.

Because these disclosures are included in a registrant's financial statements, internal control processes would need to be in place to capture the necessary information for the entire reporting year, so it would not be possible to make these disclosures for prior years when the internal control processes were not in place.

II. The final rule should require disclosure of only the explicit Scope 3 emissions included in material, publicly announced climate-related targets and, if retained, the Scope 3 emissions from material categories and sectors.[30]

We recommend that the final rule[31] require disclosure of only the Scope 3 emissions included in certain climate-related targets and goals. Specifically, the final rule should require disclosure of only the Scope 3 emissions explicitly referenced in material targets or goals that are publicly announced. If the other "materiality prong" is retained, then we recommend that the final rule clarify that disclosure is required only for Scope 3 emissions from material categories and only material sectors within those categories, using a traditional materiality standard.

A. Challenges and Concerns

As the preamble notes, "collecting the appropriate data and calculating [Scope 3] emissions would potentially be more difficult than for Scopes 1 and 2 emissions."[32] We note that, for our member institutions, Scope 3 emissions account for the largest share of emissions by far, but are also the most difficult to measure reliably. We agree that disclosing Scope 3 emissions is significantly more difficult and costly for several reasons.

First, while emissions for some bank investments will be relatively easier to calculate or estimate (e.g., public equities), many complex investments, like derivatives (e.g., swaps) and off-balance sheet items, would be very difficult to calculate. The Partnership for Carbon Accounting Financials' Global GHG Accounting & Reporting Standard (the "PCAF Standard") for example, does not yet provide a methodology for calculating emissions for certain financial products, like exchange traded funds, capital markets or derivatives.[33] By referencing the PCAF

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30 This section is in part responsive to Requests for Comment 98, 99 and 100.

31 The Proposal would require a registrant to disclose total Scope 3 emissions if Scope 3 emissions are deemed to be "material" or, even if not material, if they are part of a climate-related target or goal that the registrant has set that includes Scope 3 GHG emissions. Proposed 17 CFR 229.1504(c)(1). The Proposal indicates that for banks, downstream emissions—which typically come from financing emissions of other companies through debt and equity financing ("financed emissions")—account for 81% of banks' total emissions. 87 Fed. Reg. at 21435 n.885. Financed emissions are not defined or mentioned in the rule text itself, but the preamble describes them as "emissions from companies that the registrant provides debt or equity financing to." *Id.* at 21387.

32 *Id.* at 21377.

33 *See* PCAF, Global GHG Accounting & Reporting Standard for the Financial Industry, at 44 (Nov. 18, 2020), https:// carbonaccountingfinancials.com/files/downloads/ PCAF-Global-GHG-Standard.pdf ("The Standard does not provide explicit guidance on methods to calculate financed emissions for every financial product including the following: private equity that refers to investment funds, green bonds, sovereign bonds, loans for securitization, exchange traded funds, derivatives (e.g., futures, options, swaps), initial public offering (IPO) underwriting, and more.").

Standard in the Proposal as a potential standard that financial institutions can adopt, we hope the SEC implicitly recognizes that accounting for all financial institutions' financial exposures is impractical and that some carve-outs should be made. We would appreciate a more explicit acknowledgement from the SEC that only those Scope 3 emissions with a reliable and tested methodology are required to be disclosed. The Forum appreciates the Proposal's flexibility and identification of the PCAF Standard as one option for registrants to use to calculate GHG emissions.

Second, the scope of the Scope 3 requirement could negatively affect capital formation and the efficiency of capital markets. From a financial institution's perspective, the Proposal would require a bank to collect data on emissions or to estimate emissions for all loans and investments regardless of their size or other measure of materiality. Financial institutions have many investments in and loans to companies and individuals, and disclosing Scope 3 emissions related to these investments and loans may require obtaining data from customers, who may choose to seek capital from private companies with less burdensome data requirements. Capturing or estimating the emissions of these loans and investments can be challenging without offering useful data for an investor. More broadly, the SEC recognizes in the Proposal that there is some risk that if implemented, the anticipated costs of complying with the Proposal could lead some companies on the margins to go or stay private.[34] We believe the potential compliance costs are very large and for some firms, they could outweigh the benefits of being a registered public company, or alternatively lead to listing on a non-U.S. exchange. This is an example of a part of the Proposal that would result in certain added costs (for registrants and for capital markets) and only uncertain benefits for investors. We urge the SEC to consider these types of indirect costs to capital formation more thoroughly in the final rule.

Third, disclosing Scope 3 emissions presents challenges that need to be addressed before mandatory disclosure will produce decision-useful information for investors given the data's nascence, imprecision and heavy reliance on assumptions. The SEC states in the preamble: "We acknowledge that a registrant's material Scope 3 emissions is a relatively new type of metric, based largely on third-party data, that we have not previously required."[35] Using third-party data will require an additional step of verification, which further contributes to the time lag for Scope 3 emissions disclosures. The SEC describes Scope 3 emissions as an "integral" part of the TCFD framework but cites to guidance that was released just last year.[36] The TCFD guidance cited for that proposition strongly encourages Scope 3 emissions disclosures but stops short of requiring it of participating companies.[37] While we agree with the TCFD and the SEC that Scope 3 is an important component of GHG emissions for some companies, there are many obstacles to overcome before mandated Scope 3 disclosure would be practical. As companies' disclosures follow guidance from TCFD, we expect Scope 3 disclosures to become more widespread and reliable, but it would be impractical to expect all registrants subject to the Scope

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34 87 Fed. Reg. at 21448.

35 *Id.* at 21381.

36 *See id.*

37 *See* TCFD Guidance on Metrics, Targets, and Transition Plans, *supra* note 7, at 19.

3 disclosure requirement to be able to disclose Scope 3 emissions accurately and reliably when a relatively small percentage of companies currently measure and disclose.[38]

The SEC acknowledges but does not adequately address the hurdles for Scope 3 disclosure, noting that it considered "difficulties in obtaining the necessary data from third parties and methodological uncertainties as reasons for limiting or not requiring disclosure of Scope 3 emissions."[39] The SEC also notes that registrants will need to rely heavily on estimates and assumptions in order to generate Scope 3 emissions data, which may confuse investors more than it would help them.[40] This is especially true for emissions data from clients that are not in high-emitting industries. Finally, the SEC recognizes from a cost-benefit perspective the "significant costs and difficulties associated with measuring and reporting Scope 3 emissions."[41]

Fourth, we note that the Proposal contemplates registrants employing a different materiality standard than the materiality standard they are currently using for disclosures. If Scope 3 emissions were material, they would already be disclosed in SEC filings. We understand the Proposal to impose a new requirement to disclose Scope 3 emissions for certain registrants regardless of materiality, but it is not clear how the Scope 3 materiality determination can be squared with the traditional materiality determination that registrants use for other disclosures.

Finally, Scope 3 emissions disclosures would not necessarily provide investors with decision-useful information regarding a financial institution's transition risk. The Proposal states that GHG emissions data are "useful for assessing a registrant's exposure to climate-related risks and accordingly its ability to transition to a lower carbon economy."[42] While this is true for certain types of registrants, we do not believe that disclosing the aggregate emissions of a financial institution's borrowers will provide decision-useful insight into the financial institution's actual transition risk. The Scope 1 and Scope 2 emissions of most borrowers would not provide insight into whether transition events or activities would diminish a borrower's credit quality or demand for financing, particularly for those borrowers not in carbon-intensive industries. A financial institution's Scope 3 emissions, composed in part of its borrowers' Scope 1 and Scope 2 emissions, would therefore not necessarily be an accurate reflection of actual transition risk and may even be misleading if used as a proxy for transition risk exposure.[43]

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[38] We note that, in 2020, 21% of North American TCFD disclosing companies disclosed Scope 1, 2 and 3 GHG emissions in line with TCFD recommendations. TCFD 2021 Status Report, at 35 (Oct. 2021), https://assets.bbhub.io/company/sites/60/2022/03/GPP_TCFD_Status_Report_2021_Book_v17.pdf.

[39] 87 Fed. Reg. at 21376.

[40] *See id.* at 21390 ("It may be difficult to obtain activity data from suppliers and other third parties in a registrant's value chain, or to verify the accuracy of that information. It may also be necessary to rely heavily on estimates and assumptions to generate Scope 3 emissions data.").

[41] 87 Fed. Reg. at 21450.

[42] 87 Fed. Reg. at 21375.

[43] We note that while industry-agnostic disclosure frameworks, such as the TCFD recommendations, often include GHG emissions, U.S. financial regulators have neither requested nor required consideration of GHG emissions as part of their proposed climate-related risk management guidance for financial institutions. *See* OCC Principles, *supra* note 3; Basel Committee on Banking Supervision, Principles for

As the SEC acknowledges in the Proposal, "[i]n certain industries, a transition to lower-emission products or processes may already be underway, triggered by existing laws or regulations, changes in weather, policy initiatives, a shift in consumer preferences, technological changes, or other market forces, such that financial risks are reasonably foreseeable for registrants in those industries based on the emissions in their value chain."[44] We think disclosing financed emissions for such industries will be more indicative of a financial institution's actual transition risk than aggregate disclosure of all financed emissions.

B. Recommendations

We recommend that the final rule dispose of the requirement to disclose all Scope 3 emissions if deemed to be material to a registrant, what we are referring to as the "materiality prong." We recommend that the final rule require Scope 3 emissions disclosures related only to certain climate-related targets or goals with all the following features: (i) those that explicitly refer to Scope 3 emissions, (ii) those that a registrant deems to be material and (iii) those that are publicly announced (the "targets prong"). If the materiality prong is retained, we recommend that the final rule clarify that the requirement captures only material categories of Scope 3 emissions and only material sectors within those categories.[45]

- **Targets Prong**. We recommend that the final rule require Scope 3 emissions disclosures related only to climate-related targets or goals: (i) that explicitly refer to Scope 3 emissions, (ii) that a registrant deems to be material and (iii) that are publicly announced. Because a company is most likely to set emissions reduction targets for the industries that have the highest GHG emissions, these Scope 3 emissions are likely to be most relevant for each registrant and therefore to investors. Similarly, and as discussed above, a registrant is likely to include in targets only emissions that it can effectively measure and monitor, so these emissions will have the most developed standards and methodologies for calculating them. As a consequence, certain targets that potentially encompass Scope 3 may be viewed as immaterial and not covered, and certain targets that do not actually reference Scope 3 emissions likewise would not be covered by this disclosure requirement. Accordingly, the registrant should only be required to disclose the categories and sectors of Scope 3 emissions referenced in the target.

- **Materiality Prong**. We recommend that the final rule clarify that the Scope 3 emissions that must be disclosed under this prong, if retained, are only those from material categories and material sectors, using a traditional materiality standard, and clarify further that this would not require disclosure of all Scope 3 emissions once any portion

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the Effective Management and Supervision of Climate-Related Financial Risks (Nov. 16, 2021), https://www.bis.org/bcbs/publ/d530.htm; FDIC Principles, *supra* note 3.

44 87 Fed. Reg. at 21378.

45 *See* Proposed 17 CFR 229.1504(c)(1) (providing that if "any category of Scope 3 emissions is *significant* to the registrant, identify all such categories and provide Scope 3 emissions data separately for them, together with the registrant's total Scope 3 emissions" (emphasis added)).

of Scope 3 emissions are deemed to be material.[46] Because emissions data are most available for sectors that are most reliant on continued GHG emissions, disclosing Scope 3 emissions for these material sectors (within material categories) would be workable for registrants and more decision-useful for investors, as the calculations would require fewer estimates and assumptions.

We also suggest that the final rule define "investments by a registrant" to mean "financed emissions" and to define "financed emissions" in a flexible manner that allows financial institution registrants to determine which material activities should be in scope. For example, the PCAF Standard, which some of our member institutions utilize to guide their Scope 3, Category 15 reporting, does not cover sales and trading activity or capital markets. We understand that the PCAF Standard and other methodologies will develop over time to encompass additional activities, so we suggest that the SEC acknowledge in the final rule that Scope 3 emissions disclosures may be sensibly limited by a registrant based upon materiality and the availability of a reliable and tested method of calculation.

III. The SEC should defer to the banking regulators to guide banks on the use of scenario analysis and adopt separate safe harbors from liability.[47]

For reasons described in more detail above and below, we recommend that the final rule[48] require only summary disclosure about the scenario analysis exercise employed rather than financial impacts and include a separate safe harbor from liability for scenario analysis disclosures. Further, we recommend that the SEC defer to bank regulatory guidance on conducting and disclosing scenario analysis for public regulated financial institutions.

A. Challenges and Concerns

1. *Scenario analysis disclosures are not likely to be comparable between institutions and over time.*

Forum member institutions have begun incorporating climate scenario analysis into their broader risk management programs, though these exercises remain in an exploratory phase. In developing these scenarios, our member institutions focus on the most prominent likely exposures to climate risk based on their unique portfolios, meaning that scenarios used may

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46 *See* Request for Comment 98.

47 This section is in part responsive to Requests for Comment 30 and 31.

48 The Proposal would require a registrant to describe any analytical tools, such as scenario analysis, that the registrant uses to assess the impact of climate-related risks on its business and consolidated financial statements and to support the resilience of its strategy and business model. If the registrant uses scenario analysis to assess the resilience of its business strategy to climate-related risks, the Proposal would require disclosure of the scenarios considered—including the parameters, assumptions, analytical choices and, importantly, the projected principal financial impacts on the registrant's business strategy under each scenario. Proposed 17 CFR 229.1502(f).

differ from bank to bank and from year to year. Disclosures relating to scenario analysis, therefore, are unlikely to be comparable or decision-useful for an investor.

As mentioned above, the considerable data gaps and emerging nature of tools to measure and quantify climate-related risks pose an added challenge for banks conducting scenario analysis exercises.[49] Due to the evolving data and methodologies, these exercises depend on many estimates and assumptions, the disclosure of which will require expertise in climate scenario analysis in order to be decision-useful. Disclosing the projected financial impact of contemplated scenarios—especially at such a nascent stage of development of these models—may also frustrate the intentions of the SEC to provide decision-useful information for investors, as projected financial impacts, which will only be estimates and need to be viewed holistically with other risk management tools, are likely to vary greatly between institutions and over time as data availability improves and methodologies become more sophisticated.

2. *Unreliable data makes potential liability problematic.*

Many of the disclosures required in the Proposal inherently rely on models that use incomplete or unreliable data and should not be included in public filings that carry potential Securities Act of 1933, as amended (the "1933 Act") and Securities Exchange Act of 1934, as amended (the "1934 Act") liability. For example, effective scenario analysis may in some cases require more advanced data than is currently available. For instance, to account for a physical risk, a bank may require more detailed data regarding physical locations of underlying assets than is currently available. Requiring detailed disclosure of these exercises and calculations when the underlying data and methodologies are not fully developed is not appropriate, especially when the disclosures carry liability. Financial institutions run scenario analysis with a variety of scenarios in other risk contexts that are much more developed and not publicly disclosed, raising the question as to why disclosure in an SEC-filed document would be appropriate for climate risk only, the risk category in the earliest stages of scenario development. As suggested in Request for Comment 31, we support the final guidance incorporating a separate, comprehensive safe harbor from liability for scenario analysis disclosure, rather than relying on existing safe harbors for forward-looking statements.

3. *Bank regulators are best positioned to provide climate scenario analysis guidance for banks, and disclosure should follow this guidance rather than precede it.*

The OCC, FDIC and the Federal Reserve Board are actively working toward developing guidance for banks conducting climate scenario analysis.[50] These agencies are better situated

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[49] *See e.g.*, FSOC Report, *supra* note 4, at 95–96 (detailing the data and modeling challenges specific to scenario analysis); FSB, The Availability of Data with Which to Monitor and Assess Climate-Related Risks to Financial Stability, at 31–35 (Jul. 7, 2021), https://www.fsb.org/2021/07/the-availability-of-data-with-which-to-monitor-and-assess-climate-related-risks-to-financial-stability/ [hereinafter, "FSB Report"] (explaining the data shortcomings and modeling uncertainty specific to scenario analysis).

[50] *See* OCC Principles, *supra* note 3; FDIC Principles, *supra* note 3; Pete Schroeder, Wall Street Sees First Fed Climate Change Review in 2023, REUTERS (Nov. 17, 2021),

than the SEC to understand banks' unique exposure to climate-related risks and use of scenario analysis. Requiring disclosure of scenario analysis before that guidance is finalized would effectively preempt the banking regulators from making these decisions and may result in banks disclosing scenario analysis information that could change in the near future as guidance is developed and finalized. Requiring disclosure of scenario analysis if used may also deter firms from beginning climate scenario analysis or conducting more of these exercises.

4. *The Proposal would require disclosure of confidential information.*

The financial impact results of scenario analysis would be confidential proprietary business information for most banks. Effective scenario analysis requires the use of substantial amounts of competitively sensitive proprietary data relating to a bank's forecasted future performance, potential business plans, capital planning, risk models and other factors that registrants have a legitimate need to keep strictly confidential in order to compete effectively. Moreover, because the banking agencies are working toward issuing more specific climate scenario analysis guidance, the results of these exercises are likely to be included by banks in reports or other communications with these agencies. We are concerned that scenario analysis exercises and results will be treated as confidential supervisory information, and we do not think it is appropriate that a disclosure rule mandate disclosures of such information.

B. Recommendations

We recommend that the final rule be revised to require less prescriptive detail about scenarios considered and the financial impacts of such scenario analysis exercises, focusing instead on a more general requirement to describe any material information regarding the type of scenario analysis that was conducted or that is required by banking regulators. Specifically, we recommend that the final rule require only summary disclosures related to scenario analysis to ensure that registrants disclose only material non-confidential information. The TCFD framework allows for more flexibility with respect to scenario analysis disclosures, and Forum member institutions' voluntary disclosures of scenario analysis, consistent with TCFD recommendations, serve as a model for the amount of information and level of detail that is possible for registrants to disclose publicly.[51]

Relatedly, in response to Request for Comment 30, the SEC should not require registrants to follow certain publicly available scenario models for scenario analysis, instead deferring to bank regulatory guidance or other industry specific guidance as applicable to other types of registrants as to which scenarios are appropriate.

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https://www.reuters.com/business/cop/wall-street-sees-first-fed-climate-change-review-2023-2021-11-17/ (noting that the Federal Reserve may be in a position to run and report on formal climate scenario analysis in 2023).

51 *See* TCFD, Recommendations of the Task Force on Climate-related Financial Disclosures, at 28 (June 2017), available at https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf [hereinafter, "TCFD Recommendations"].

In response to Request for Comment 31, we think an additional safe harbor specifically for scenario analysis disclosures is warranted, given the nascent state of climate-related data and rapidly evolving methodologies required for these exercises.

IV. The final rule should incorporate longer phase-in periods.

The Proposal includes a number of phase-in periods for certain types of registrants, which the Forum appreciates.[52] Given the significant challenges registrants face in adopting a final rule that is similar to the Proposal, along with the standard of liability that will be attached to these disclosures, we recommend that the final rule include additional phase-in periods. We recommend that the final rule allow at least 2 years after the effective date before any of the climate disclosure requirements are implemented. At a minimum, the final rule should provide for at least 3 years for registrants to comply with any S-X Disclosures requirement and attestation requirement for Scope 1 and Scope 2 emissions disclosures. Finally, we recommend an additional transition period for newly public companies to avoid any deterrent effect of the final rule on companies considering an initial public offering.

A. Challenges and Concerns

1. *It would be impracticable to expect registrants to prepare novel climate-related disclosures within a year of the final rule's effective date.*

All registrants could benefit from lengthier transition periods to account for the challenging requirements of the Proposal. The new disclosures outlined in the Proposal will require registrants to build new systems, processes and departments, and we do not think the Proposal as written provides adequate time for this to occur.

The S-X Disclosures in particular would be nearly impossible to produce so soon after the effective date of a final rule. For registrants to report the S-X Disclosures as proposed, they will have to begin accounting for them at the start of the year for which the disclosure will be made. To make these disclosures for 2023, a registrant would need to have these systems in place for all of 2023. An effective date of December 31, 2022 would not allow enough time for these systems to be put in place for 2023.

We think the Scope 1 and Scope 2 attestation requirement also unnecessarily pressures development of best practices that can and should take longer to evolve than the Proposal's timeline would allow. As discussed below, attestation providers will need sufficient time to develop expertise. Due to the current lack of attestation providers, a requirement without an

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[52] The Proposal includes phased-in compliance by filer type, where the largest filers would begin disclosing the required information first. Based on the currently projected effective date of December 31, 2022, registrants would begin disclosing the proposed disclosures for fiscal year 2023 (reported in 2024). 87 Fed. Reg. at 21412. Notably, the Proposal does not currently include a transition period for S-X Disclosures.

additional phase-in period would make producing an attestation very costly for registrants while providing only uncertain benefits to investors.

2. *The Proposal would be a deterrent for companies considering an initial public offering and may impinge capital formation.*

We appreciate the proposed transition periods by filer type and think this approach is appropriate, but we are concerned that newly public companies will have a particularly hard time complying with a final rule in its IPO registration statement. As noted in the Proposal, the required disclosures will be particularly onerous for companies that have not been making climate-related disclosures, which would likely include newly public companies: "Registrants unfamiliar preparing these disclosures may face significant uncertainty and novel compliance challenges. To the extent this leads to inadvertent non-compliance, registrants may face additional exposure to litigation or enforcement action."[53]

As the eight U.S. GSIBs, our member institutions have valuable insight into the unique challenges that companies considering going public and newly public companies would face if the Proposal were to be finalized. The Forum in particular supports the SEC's mission to facilitate capital formation, as our member institutions have strong underwriting businesses that facilitate access to the public markets for many companies. We believe the deterrent costs of the added disclosures in the aggregate would negatively impact the decision of a company to go public in the United States, which would be detrimental to U.S. financial markets and the economy as a whole.

B. Recommendations

We recommend that the final rule adopt a transition period of at least 2 years after the effective date of the final rule to account for the significant amount of work registrants will need to do to comply.

At a minimum, we suggest a transition period of at least 3 years for S-X Disclosures and the Scope 1 and Scope 2 attestation requirement. Registrants foresee significant challenges with calculating the impacts on financial statement line-items, particularly given that the Proposal contemplates registrants using novel climate accounting standards (discussed above). We think an additional transition period for any S-X Disclosures included in the final rule is warranted to account for the significant amount of time and effort it will require registrants to adjust their internal controls to account for new climate disclosures. We also think an additional transition period for a Scope 1 and Scope 2 attestation requirement would be appropriate, given the current lack of providers and the associated high cost of producing an attestation.

We recommend that the final rule include an additional phase-in period for newly public companies for all climate-related disclosures that does not require these disclosures to be

[53] 87 Fed. Reg. at 21444.

included in a registration statement for an initial public offering, and allows a newly public company a transition period before the disclosures are required.

V. The final rule should require climate-related disclosures on a new form and explicitly allow for Scope 3 emissions disclosures to be made on a lagging basis.[54]

Due to the aforementioned dearth of reliable climate-related data and evolving nature of methodologies necessary to identify and measure climate risks, the potential 1933 Act and 1934 Act liability that registrants would have for these disclosures would be inappropriate at this time. Additionally, the added complexities of disclosing Scope 3 emissions present a sequencing issue for registrants that must disclose Scope 3 emissions in annual reports.

We recommend that the final rule[55] specify that required climate-related disclosures be made in a new form that, unlike the Form 10-K, is not generally incorporated by reference into registration statements and that is "furnished" rather than "filed."[56] Due to the nature of Scope 3 emissions, we recommend that the final rule explicitly allow for Scope 3 emissions to be disclosed on a lagging basis on a new form. Alternatively, we recommend re-locating some of the new required disclosures in existing sections of periodic reports, such as the MD&A and risk discussions in Form 10-K and proxy statements.[57]

A. Challenges and Concerns

As mentioned above, our member institutions and many other public companies have been disclosing some of the information that the Proposal would require on a voluntary basis. But many of the disclosures required by the Proposal ask for novel information that is not included in voluntary frameworks or has not been disclosed before or in as much detail. As the SEC states, the Proposal "would significantly expand the type and amount of information registrants are required to provide about climate-related risks."[58]

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[54] This section is in part responsive to Request for Comment 1.

[55] The Proposal would require registrants to include qualitative climate-related disclosures in registration statements and periodic reports, which will attach U.S. securities law liability to disclosure that have been voluntary to this point and require these disclosures to be produced on existing deadlines for Forms 10-K and 10-Q. Proposed 17 CFR 229.1500, *et seq.* To mitigate the difficulty registrants might have in completing emissions calculations to meet the annual report filing deadline, the Proposal includes a provision permitting a registrant to use a reasonable estimate of its GHG emissions for its fourth fiscal quarter, together with actual, determined GHG emissions data for the first three fiscal quarters, as long as the registrant promptly discloses in a subsequent filing any material difference between the estimate used and the actual, determined GHG emissions data for the fourth fiscal quarter. Proposed 17 CFR 229.1504(e)(4)(i). *See* 87 Fed. Reg. at 21387.

[56] *See, e.g.*, 17 CFR 240.13q-1(a) (specifying that Form SD is to be furnished).

[57] If the SEC were to take this alternative approach, additional safe harbors from liability would be appropriate.

[58] 87 Fed. Reg. at 21444.

1. *Quantification difficulties render a strict liability standard for climate-related disclosures inappropriate.*

The current gaps in data and methodology related to climate change are particularly problematic when coupled with the liability attached to climate-related disclosures.[59] The Proposal would amend several forms companies must file with the SEC pursuant to the 1933 Act and the 1934 Act—including Form S-1 and Forms 10-K and 10-Q (for public companies) and 20-F (for foreign private issuers)—to reflect the Regulation S-K and Regulation S-X changes.[60] In general, Section 18 of the 1934 Act imposes liability for false and misleading statements made in documents filed with SEC, subject to applicable defenses.[61] Therefore, by locating the climate disclosures in the periodic reports (i.e., Forms 10-K and 10-Q), the Proposal would expose reporting companies to potential Section 18 liability.[62] If a filer incorporated by reference a form affected by the Proposal, such as a Form 10-K, into a registration statement for an offering of securities[63] or is otherwise required to include the disclosure in a registration statement, the filer also would be subject to a strict liability standard under Section 11 of the 1933 Act for false or misleading statements, even for unintentional mistakes.

As acknowledged in the FSOC Report, there are significant challenges to procuring reliable and consistent data.[64] Due to the evolving nature of climate change, the models and methods used to assess climate-related risks are relatively new and continue to develop.[65] We believe that a strict liability standard for disclosures that are based on data that is well known to have significant gaps and is based on methodologies that are still developing is inappropriate at this time. As such, the required climate-related disclosures in the Proposal would be better suited to a different furnished form that, unlike the Form 10-K, would not necessarily be incorporated by reference into a registration statement that carries a strict liability standard.

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[59] *See, e.g.*, 87 Fed. Reg. at 21411 (acknowledging that "the methodology underlying climate data continues to evolve"); FSB Report, *supra* note 49, at 36 (concluding that while "[s]ubstantial progress is being made to improve the data and metrics with which to monitor and assess climate-related risks to financial stability," there are "significant remaining data gaps.").

[60] Proposed 17 CFR 239 (Forms S-1, S-11, S-4, F-4), 249 (Form 10, 20-F, 10-Q, 10-K).

[61] 15 U.S.C. § 78r.

[62] *Id.* Note that Section 18 liability does not attach to disclosures on SEC Form 6-K, which is "furnished," rather than "filed" with the SEC. The SEC asks in the Proposal whether some or all of the climate disclosures should be treated as "furnished" to the SEC (and therefore exempt from Section 18 liability), rather than "filed." *See* 87 Fed. Reg. at 21411.

[63] 15 U.S.C. §§ 77k, 77l.

[64] FSOC Report, *supra* note 4, at 23, 47–66.

[65] *Id.* at 47–66.

2. *The deadline for finalizing annual reports would not allow enough time for registrants to produce the required GHG emissions disclosures.*[66]

In order to produce consistent, comparable and reliable climate-related disclosures, registrants will need the appropriate amount of time to gather data internally and from third parties, perform calculations and review and verify results for the annual period. Including these disclosures in existing forms with existing deadlines will not provide registrants with sufficient time. A different form that is due at a later time following the fiscal year end will enable registrants to dedicate sufficient time and resources to producing climate-related disclosures and for these disclosures to be more fulsome. A different form will provide investors the same benefits (easily identifiable climate-related disclosures on the same form across registrants and years) while mitigating some of the added costs associated with the Form 10-K.

Scope 1 and Scope 2 emissions, while easier to calculate than Scope 3 emissions, are not immediately available and require some data gathering and calculations of their own. Scope 2 emissions, for instance, may be based on third-party data, which must be obtained after the fiscal year-end, verified and incorporated into models to produce accurate figures. As such, the 10-K timeline may not allow sufficient time for registrants to produce these disclosures. While we appreciate the accommodation that allows reasonable estimates for fourth quarter emissions data, using estimates initially and then updating disclosures with actual data would be a departure from how companies typically disclose quantitative information, would create an unnecessary added cost to registrants and would be of questionable utility for investors.

Calculating Scope 3 emissions will be particularly challenging and will require more time than the deadline for finalizing Form 10-Ks (60 days after fiscal year-end for a large accelerated filer) would allow. As mentioned above, calculating Scope 3 emissions, which the SEC is likely to deem material for banks based on commentary in the Proposal,[67] will require a much longer timeline than Scope 1 and 2 emissions disclosures.

Rather than expecting registrants to update their disclosures with any material differences once the registrant has the necessary data to perform the required calculations, which is what the Proposal contemplates, we think requiring all climate-related disclosures on a different, later form (akin to Form SD for conflict minerals disclosures) will serve the SEC's goal of having all climate-related disclosures in one place. This will also provide investors with the full set of data rather than piecemeal data based on estimates that is then later revised. Having all required climate-related disclosures in a new form will facilitate issuing more accurate and final disclosures with the relevant Scope 1, 2 and 3 information on an appropriately lagging timeline without the added unnecessary challenge of disclosing first on an artificially early timeline and then later being required to update the form.

66 This section is in part responsive to Request for Comment 105.

67 87 Fed. Reg. at 21435 n.885.

3. *Scope 3 emissions data will not be current, and Scope 3 emissions disclosures should be expected to lag other disclosures by at least 15 months.*

Because a registrant's Scope 3 financed emissions will consist, at least in part, of the Scope 1 and 2 emissions of other companies, it is impracticable to expect disclosure of Scope 3 disclosures at the same time as other required climate-related disclosures. Furthermore, much of the client Scope 3 emissions data are modeled, which adds an additional delay for the financial institution. Generally, financial institutions receive the data needed to calculate financed emissions on a 15-month or more time lag. As a result, Scope 3 emissions disclosures contain data that is at least one to two years out of date, and a lag is needed in order to prevent a mismatch between portfolio year data and GHG year data.

B. Recommendations

We recommend that all climate-related disclosures required in the final rule be made on a new form that is furnished rather than filed on a later timeline than the Form 10-K, giving the registrant adequate time to perform the relevant calculations required for accurate and final disclosures, and avoiding these disclosures from being incorporated by reference into registration statements and subjecting registrants to strict liability for these disclosures. We agree with the SEC that having all climate-related disclosures in the same form would be useful, so we recommend that all disclosures in the final rule be made in a new form. However, at a minimum, the final rule should allow for Scope 3 disclosures to be made in a new form to facilitate more reliable and current Scope 3 data.

We also recommend that the final rule clarify that Scope 3 emissions disclosures that are based on lagging information would be considered to have been made on a "reasonable basis" and in "good faith."

If the final rule retains the structure of adding a new section to periodic reports specifically for climate-related disclosures, we recommend that some of the required disclosures be made in existing sections of the relevant forms. For example, as discussed in section VIII.A.2, the required governance disclosures would be more decision-useful for investors if placed alongside discussions of governance practices in a registrant's proxy statements. Similarly, an investor may appreciate if the climate-related risk management disclosures were placed alongside other risk management disclosures.

VI. The final rule should require disclosure of only material, publicly announced, firm-level climate-related targets and goals.

The Proposal would require a registrant to disclose any climate-related targets or goals it has set, including descriptions of various aspects of the targets or goals, plans for meeting them and progress updates.[68] We recommend that the final rule clarify that only disclosure related to

[68] Proposed 17 CFR 229.1506(b), (c).

publicly announced, firm-level climate-related targets or goals is required. We also recommend a materiality standard be applied to any required disclosure of climate-related targets and goals in order to avoid providing investors with non-material information. As written, the Proposal penalizes those institutions that have set ambitious climate-related targets or goals by requiring them to disclose every target or goal regardless of its stage of development or materiality. Additionally, requiring the disclosure of even non-material climate-related targets and goals could unintentionally discourage registrants that may have planned to set long-term climate-related targets or goals from doing so. We think these modifications will further the goal of providing decision-useful information to investors.

A. Challenges and Concerns

The Proposal is unclear as to which of a registrant's climate-related targets or goals would be required to be disclosed. Many of our member institutions have firm-level goals and business unit-level, fund-level, or product-level goals, and comingling disclosures of all these goals could mislead investors or convey an inappropriately outsized impact to investors who interpret certain disclosures to have firm-wide impact as opposed to a much less significant business-level impact. As the preamble notes, "[t]he fact that a company has set a goal or target does not mean that it has a specific plan for how it will achieve those goals."[69] Some companies might establish climate-related goals or targets with a "plan to develop their strategies over time, particularly as new technologies become available that might facilitate their achievement of their goals."[70] We agree that many registrants, including financial institutions, have set certain long-term climate-related ambitions, such as 2050 net-zero ambitions, that do not currently have a fully formed strategy to achieve them or widely-adopted methods of measuring their progress. Disclosure of these goals would not be decision-useful for investors and may unintentionally discourage registrants from setting such goals. The Proposal would ultimately penalize those institutions that have set ambitious climate-related targets and goals by requiring them to disclose every target or goal regardless of its stage of development or materiality.

B. Recommendations

We recommend that the final rule require the disclosure of only those publicly announced climate-related targets and goals that meet a materiality standard. We further recommend that the final rule only require disclosure of firm-level targets or goals. The current Proposal is overbroad and would compel the disclosure of climate-related targets or goals that are insignificant to, and have the potential to mislead, the decision-making of investors. A materiality standard would tailor the requirement so that decision-useful information pertaining to firm-level climate-related targets and goals will be disclosed to investors without compelling disclosures for targets or goals that have not yet been fully developed or are non-material. Furthermore, this tailoring would alleviate the demand on large institutions that have numerous

[69] 87 Fed. Reg. at 21406.

[70] *Id.*

business-level climate strategies and avoid inadvertently penalizing registrants that have set these goals.[71]

VII. Scope 1 and Scope 2 attestations should be voluntary or require only limited assurance.

The Proposal's attestation requirement[72] would depart from the SEC's typical practice for disclosures required under Regulation S-K, which, unlike financial statements submitted in accordance with Regulation S-X, are not audited, and would present significant challenges, as discussed further below. Because of the robust internal controls that are already in place to produce SEC filings, we think the attestation requirement is unnecessary, unusual and would not enhance reliability of disclosure. The Forum appreciates the phase-in period for this requirement but recommends that the final rule not include a requirement for an attestation.[73] If it is retained in the final rule, we suggest requiring only limited assurance after a longer phase-in period.

We also urge the SEC to confirm that any required attestation reports are considered to be expertized material to address underwriters' concerns around legal liability. For any period for which assurance is not required for GHG emissions attestation reports, the SEC should clarify that the reports will still be considered to be expertized material to avoid inadvertently subjecting underwriters to strict liability and heightened due diligence requirements during an interim period of disclosure implementation.

A. Challenges and Concerns

1. *There is no consensus around attestation standards for Scope 1 and 2 emissions.*

There would be significant uncertainty around attestation for Scope 1 and Scope 2 emissions disclosures because there is currently no consensus around attestation standards for such disclosures. Much like an independent audit of financial statements, an attestation must rely on a set of standards in order for the attestation to have any value for investors. As the SEC notes, "the evolving and unique nature of GHG emissions reporting involves and, in some cases, warrants varying methodologies, differing assumptions, and a substantial amount of estimation."[74] As a result of the relatively nascent state of climate-related data, assurance practices have been varied with respect to "the assurance standards used, the types of service

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71 Responsive to Request for Comment 168.

72 Under the Proposal, registrants such as our member institutions would be required to (i) include with their filings attestation reports that cover the Scope 1 and Scope 2 emissions disclosures and (ii) provide certain information about the attestation service provider. The attestation provider must be an expert in GHG emissions and independent of the registrant, but need not be an independent public accounting firm. Proposed 17 CFR 229.1505(b).

73 *See* 87 Fed. Reg. at 21391.

74 *Id*. at 21393.

providers, and the scope of disclosures covered by the assurance."[75] The SEC has acknowledged that this variety has produced fragmentation, which has diminished the comparability of assurances provided.[76] The SEC even acknowledges that "[t]he evolving nature of GHG emissions calculations and attestation standards could suggest that it may also be premature to require assurance."[77]

The SEC has proposed minimum requirements for an attestation report, but it is not clear to what an attestation provider would attest.[78] Even with the SEC's guidance on minimum requirements, there is no guarantee an attestation provider could use this new set of standards to produce an attestation report. We agree that consensus around attestation standards should become clearer as more companies voluntarily seek limited assurance over Scope 1 and 2 emissions disclosures if these disclosures become mandatory in the final rule. An attestation requirement may be appropriate once there is consensus around emissions attestation standards, but at this time, it would be premature to require an attestation. In any case, as noted above, it is highly unusual to require an attestation for information required under Regulation S-K,[79] begging the question whether an attestation is necessary for this information.

2. *The challenges with finding an appropriate attestation provider are a barrier for procuring the required attestation.*

The Proposal acknowledges some foreseeable challenges for even the largest companies to produce such an attestation.[80] To start, there is currently a lack of expertise around GHG emissions calculations, which could make finding a provider that suits the SEC's requirements difficult. While we agree with the SEC that these capabilities could develop as demand for them increases, in the interim, it is impracticable to require an attestation when it is not clear that companies will be able to procure such an attestation. The proposed phase-in period for the attestation requirement is too short to allow enough time for adequate expertise to emerge and meet the flood of demand that will result from an attestation requirement in the final rule.

3. *The added challenges of reasonable assurance would be very significant.*

The attestation requirements would be phased in, with registrants initially providing "limited assurance" (i.e., assurance that no material misstatement of fact or omission was found after a review) and eventually providing "reasonable assurance" (i.e., the level of assurance that is

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[75] *Id.* at 21394.

[76] *Id.*

[77] *Id* at 21395.

[78] *Id.* (Stating "[b]y specifying minimum standards for the attestation provided with respect to GHG emissions disclosure by accelerated filers and large accelerated filers, the proposed rules should improve accuracy and consistency in the reporting of this information, while also providing investors with an enhanced level of reliability against which to evaluate the disclosure.").

[79] *See id.* at 21391.

[80] *Id.* at 21395.

equivalent to that of a full audit of financial statements).[81] Procuring reasonable assurance would require registrants to build out their internal control infrastructure significantly. Although methodologies for calculating Scope 1 and Scope 2 emissions are "fairly well-developed," the underlying data are not always available or reliable.[82] Scope 1 and Scope 2 emissions may incorporate third-party data and rely in part on estimates and averages, which may be difficult or impossible for a registrant to verify with current capabilities.[83]

We believe this is an unwarranted added cost that would provide little to no benefit for investors. Firms are better able to seek limited assurance, which is typical of ESG disclosures, as an area with continually evolving measurement and modeling capabilities and standards. To the extent there are any benefits to investors from an attestation requirement in the form of "credibility enhancement, lower cost of equity capital, and lower analyst forecast errors and dispersion,"[84] these benefits could be achieved without the unnecessary costs associated with reasonable assurance. We think the internal controls that public companies have in place to produce SEC filings are sufficiently robust and that third-party attestations are not needed in order to ensure that emissions disclosures are accurate and reliable. Registrants are not required to obtain third-party assurances over parts of the 10-K other than audited financial statements, so an attestation requirement for these disclosures would be unusual.

4. *Expertization of any attestation reports is essential for firms acting as underwriters.*

If the SEC determines to require attestation reports, firms acting as underwriters will be exposed to significant legal liability if Scope 1 and Scope 2 emissions attestations are not considered to be expertized for purposes of liability under Section 11 of the 1933 Act. Without expertization, underwriters will be required to undertake a significantly greater level of due diligence, which they are not well positioned to undertake for this particular topic.

B. Recommendations

We recommend that the final rule not include a required attestation for Scope 1 and 2 emissions disclosures. As discussed above, it would be highly unusual and costly to require attestation for information disclosed pursuant Regulation S-K, particularly information regarding GHG emissions that is based on nascent and evolving data. This requirement presents significant challenges and costs that outweigh potential benefits to investors. If such a requirement is retained in the final rule, we recommend requiring only limited assurance. We also recommend

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81 Proposed 17 CFR 229.1505(a)(1).

82 87 Fed. Reg. at 21377.

83 *See id.* at 21387 (explaining that the provision that would require a registrant to disclose, to the extent material and as applicable, any use of third-party data when calculating its GHG emissions would apply in instances "such as when determining Scope 2 emissions using contractual, supplier-provided emission factors for purchased electricity."). *See also* Proposed 17 CFR 229.1504(e)(5).

84 87 Fed. Reg. at 21394.

additional phase-in time for the attestation requirement if it is retained, as discussed in section IV above.

We also recommend that the final rule explicitly allow for the attestation report to be expertized. Our member institutions' current capabilities would not allow for the level of due diligence required if these reports were not expertized, and we do not think they should have to take on liability for these reports when emissions measurement capabilities are still developing. Additionally, the SEC should require attestation providers to be regulated entities to ensure appropriate expertise and level of assurance and protection for investors.

VIII. The required risk management and governance disclosures should be more principles-based in nature.[85]

The proposed risk management and governance disclosures would be some of the most granular required disclosures currently in effect.[86] The prescriptiveness of these disclosures may impact the way companies manage these risks and governance processes surrounding them, which is a departure from the typical aims of disclosure rules and is an example of how the Proposal may inadvertently dictate market practice through disclosure. Further, the prescriptive prominence of these disclosures relative to other matters—including on other risk and governance topics—that may be of equal or greater importance to the registrant would make it difficult for investors to assess the relevance of such information to the registrant. We recommend that the final rule take a more flexible, principles-based approach by requiring less granularity in risk management and governance disclosures. We think the TCFD recommendations for risk management and governance disclosures strike the right balance between providing enough detail to be useful for investors while allowing for enough flexibility to enable disclosures that are tailored to each company and, accordingly, decision-useful for investors.

A. Challenges and Concerns

1. *Risk Management*

The Proposal would require numerous novel disclosures with a level of detail that many companies do not currently disclose. Some of this detailed disclosure is particularly problematic for banks, which is not addressed in the Proposal. For example, the Proposal would require banks to describe their risk management processes in detail.[87] Because banks are working to incorporate climate risk into their overall risk management frameworks, requiring detailed disclosure of a bank's climate risk management processes would require detailed disclosure of a bank's credit and liquidity risk management processes. This information is

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85 This section is in part responsive to Requests for Comment 34, 35, 36, 37, 38, 39, 40 and 41.

86 The Proposal would require detailed disclosure of the processes by which a registrant's board of directors and management address climate-related risk, as well as how a registrant identifies, assesses and manages climate-related risks. Proposed 17 CFR 229.1501; Proposed 17 CFR 229.1503.

87 Proposed 17 CFR 229.1503(a).

proprietary and would not otherwise be disclosed. Similar information may not be as sensitive for registrants in other industries.

Additionally, the proposed disclosures imply that a registrant's risk management process should have certain components. Best practices in climate-related risk management are still evolving and may not ultimately include all of the considerations in the Proposal, which could inadvertently cause companies to take certain actions for the sake of disclosure. A more flexible approach would enable companies to disclose only the type of information that is relevant to investors and appropriate for their industry and would prevent instances in which a bank would be pressured to disclose proprietary information in order to comply with the rule.

2. *Governance*

We are concerned that the prescriptiveness of the proposed governance disclosure requirements will decrease, rather than increase, the effectiveness of board oversight. We have no objection to the requirement that companies clearly disclose where governance of this issue sits—on a particular committee or the full board. That is not an unusual requirement—companies are already required to disclose, generally, how their boards manage risk—and can help investors understand the company's approach to governance.

The required governance disclosures are more prescriptive than other disclosure rules currently in effect, however, and may inappropriately lead to a de facto standard of practice. Disclosing the frequency with which management reports to its board of directors on a specific topic, for example, may cause a registrant to change its governance practices to conform with expected disclosures.[88] The proposed approach would be a departure from the typical role of disclosure rules, which is to increase transparency to investors, rather than effectively regulating companies' practices. Because governance processes and structures are unique to every registrant, governance is not a one-size-fits-all enterprise, and governance disclosures offer little in the way of comparability between firms. The Proposal seeks to change that by requiring detailed disclosure of the frequency with which a company's management reports to its board of directors about climate-related risks and whether any director has climate-related expertise.[89]

We do not support the requirement to disclose the climate expertise of members of a board of directors. We believe this disclosure will decrease, rather than increase, the effectiveness of board oversight as registrants will feel pressured to add specialist directors. Boards are, by design, deliberative bodies that are tasked with oversight of numerous traditional and emerging risks of which climate risk is only one. The proposed requirement to disclose board members' climate expertise comes in the context of other proposed requirements that have the overall effect of encouraging companies to supplant directors with expertise overseeing diverse risks and complex institutions with those who have single subject-matter expertise akin to that of senior managers. We believe that registrants are best equipped to identify board members with the collective experience and judgment to oversee the particular risks they face. In addition, we

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[88] Proposed 17 CFR 229.1501(b)(1)(iii).

[89] Proposed 17 CFR 229.1501(a)(1)(ii), (b)(1)(iii).

believe that current required disclosures provide investors with sufficient information as to the experience of members of the board of directors.

Similarly, we anticipate that companies may feel pressured to change their management practices, which could have negative repercussions by reducing focus on managing other significant risks. We are concerned that the pressure of this disclosure requirement, along with others that may soon become effective, are part of a worrying trend where a company feels the need to install a board director with expertise over every topic.[90] This would be a departure from the way boards of directors typically govern, which is to exercise general oversight of management, which runs the day-to-day operations of the company. For example, banking regulators describe the role of a bank board as responsible for the overall direction and oversight of the bank and allow bank boards to rely on the expertise of management and outside experts, rather than requiring them to have their own expertise of certain topics.[91]

We are also concerned that such disclosure requirements would pressure boards to quickly install a climate expert—an area where the potential pool of candidates who also have the skills and experience needed to perform the director role more generally is not large—and may also result in boards spending an outsized amount of time on climate risk relative to other risks, which may be more significant.

B. Recommendations

We recommend that the final rule address risk management and governance disclosures related to climate change more broadly and exclude some of the more prescriptive details currently required in the Proposal. A more flexible, principles-based approach here would more closely align with the TCFD recommendations and allow registrants to focus on the aspects of their risk management programs and governance systems that are most important for them without applying pressure to change their board processes or management practices. In addition, the final rule should allow information about governance to be included in a registrant's proxy statement, which is common practice, and information about risk management to be included alongside other risk disclosures in Item 7A of Form 10-K.

We note that the recently proposed cybersecurity disclosure rule has similarly granular governance disclosure requirements but includes a safe harbor for board members identified as

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90 *See* Proposed 17 CFR 229.407(j)(1) (requiring similar disclosures to the Proposal's regarding board expertise on cybersecurity); SEC, Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, 87 Fed. Reg. 16590 (Mar. 23, 2022).

91 *See* OCC, Director's Book: Role of Directors for National Banks and Federal Savings Associations (Nov. 2020), at 14–15, https://www.occ.gov/publications-and-resources/publications/banker-education/files/directors-book.html; OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Integration of Regulations, 79 Fed. Reg. 54517, 54537 (Sept. 11, 2014); OCC Principles, *supra* note 3, "Governance" principle (outlining that a bank board should have "adequate understanding and knowledge to assess the potential impact of climate-related risks on the bank and to address and oversee these risks within the bank's strategy and risk appetite").

experts.[92] We recommend that the final rule include a similar safe harbor for any board member identified as a climate expert.

IX. The final rule should allow registrants flexibility in establishing organizational boundaries.

We recommend that the final rule allow companies to set organizational boundaries in line with the GHG Protocol and that the final rule explicitly exclude from Scope 1 and Scope 2 emissions disclosures those entities which a registrant accounts for as an equity method investment.

A. Challenges and Concerns

While the preamble states that the Proposal is largely modeled on the TCFD voluntary disclosure framework and the GHG Protocol's carbon accounting standards, the SEC's proposed approach significantly departs from the GHG Protocol's consideration of organizational boundaries. In contrast to the GHG Protocol, which uses an equity share or control approach to drawing organizational boundaries, the Proposal would require registrants to instead employ U.S. GAAP and "set the organizational boundaries for its GHG emissions disclosure using 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."[93] The Proposal would require a registrant to disclose GHG emissions for an entity that would be "subject to consolidation or which investments qualify for equity method accounting or proportionate consolidation."[94] Therefore, under the Proposal, a registrant would need to disclose all of the emissions from an entity that it consolidates and, for an equity method investee or an operation that is proportionally consolidated, the registrant would need to disclose its share of emissions based on its percentage ownership.[95]

We understand the SEC's rationale for proposing that the scope of consolidation and reporting of GHG emissions data be consistent with that of financial data. However, such an approach poses a number of significant operational challenges.

Many banks currently calculate GHG emissions based on organizational boundaries set in accordance with the GHG Protocol. Realigning boundaries to conform with U.S. GAAP would require significant cost, effort and collaboration between finance teams, which are familiar with principles of U.S. GAAP, and sustainability teams, which have typically led the calculation of GHG emissions. Aligning organizational boundaries with U.S. GAAP would also require many registrants to perpetually maintain two sets of records to comply with domestic and international regulatory requirements. For those companies that have voluntarily disclosed GHG emissions

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92 Proposed 17 CFR 229.407(j)(2).

93 87 Fed. Reg. at 21384.

94 *Id.*

95 *Id.* at 21384–85.

according to the GHG Protocol's consideration of organizational boundaries, this will also create discrepancies between earlier-reported data and data disclosed pursuant to the Proposal.

As a more specific example, as large financial institutions with many investments, including equity method investments, our member institutions are concerned that including emissions from these entities would make disclosing Scope 1 and Scope 2 emissions impracticable. Some of our member institutions have hundreds of investments accounted for using the equity method, and foresee significant added costs of calculating and disclosing Scope 1 and Scope 2 emissions from all of these entities. Disclosing emissions from these entities may cause an unnecessary delay in disclosing other required emissions information and is likely to confuse investors. We think Scope 1 and Scope 2 emissions at the firm-level are decision-useful for investors, while emissions information for each equity method investee would not be.

B. Recommendations

For these reasons, we encourage the SEC to consider adopting the approach taken in the International Sustainability Standards Board's ("ISSB") recent exposure draft on climate-related disclosures, which allows companies to select from the methods outlined in the GHG Protocol for establishing organizational boundaries and requires separate disclosure of Scopes 1 and 2 emissions for the consolidated accounting group and for unconsolidated entities, including an explanation of which method was used to calculate emissions from unconsolidated entities and why that method was selected.[96]

Likewise, we recommend that the final rule explicitly exclude emissions from those entities which a registrant accounts for as an equity method investment from required Scope 1 and Scope 2 emissions disclosures.

X. The final rule should include certain additional clarifications and changes.

A. Requiring separate disclosure for short-, medium- and long-term time horizons deviates from the currently accepted materiality standard.

The Proposal would require a registrant to describe any climate-related risks reasonably likely to have a material impact on a registrant, which may manifest over the short, medium and long term.[97] The SEC does not define these time horizon categories but instead requires a registrant to disclose how it defines short-, medium- and long-term time horizons.[98] We appreciate the flexibility this provides for a registrant to use the time horizons that it finds most useful. While we are supportive of requiring registrants to disclose material climate-related risks, however, the manner in which registrants determine whether a risk is required to be disclosed should conform

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[96] *See* Exposure Draft: IFRS Sustainability Disclosure Standard (Mar. 2022), https://www.ifrs.org/content/dam/ifrs/project/climate-related-disclosures/issb-exposure-draft-2022-2-climate-related-disclosures.pdf.

[97] Proposed 17 CFR 229.1502(a).

[98] Proposed 17 CFR 229.1502(a)(2).

to current SEC materiality standards. Applying different materiality standards will result in investor confusion since, to provide a coherent and integrated discussion of risk, climate-related and other business risks will in most cases be discussed together.

In particular, it would be practically meaningless and at best overly speculative for a registrant to try to predict the material impact of climate-related risks over longer time horizons, particularly in light of an ever evolving landscape around regulatory changes to transition to a lower-carbon economy, new technologies and other unknowable circumstances. Accordingly, we recommend that the final rule remove the requirement to include disclosure on climate impacts over each of short-, medium- and long-term time horizons. We believe the current materiality standard used for MD&A disclosures is well understood and suitable for eliciting disclosure of material risks over whatever time period is relevant to a registrant's particular facts and circumstances.

B. Carbon Offsets

The Proposal would require registrants that use carbon offsets or Renewable Energy Credits ("RECs") to disclose the role that these play in the registrant's climate-related business strategy and to disclose the amount of carbon reduction represented by carbon offsets and RECs in any climate-related targets and goals.[99] In response to Request for Comment 24, we support providing disclosure on offsets used. However, we do not think emissions disclosures should be required to exclude any purchased or generated offsets, as would be required under Proposed 17 CFR 1504(a)(2). In response to Request for Comment 101, we do not think a registrant should be required to exclude carbon offsets from its emissions disclosures. High-quality carbon offsets will play an important role in the transition to a low-carbon economy. As large financial institutions, Forum member institutions set high standards and conduct extensive due diligence, contributing to the overall demand signal and the advancement of best practices for evaluating high-quality credits.

[99] Proposed 17 CFR 229.1502(c); Proposed 17 CFR 229.1506(d).