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May 10, 2022

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

Re: File Number S7-10-22

Dear Ms. Countryman:

This letter is in response to the United States Securities and Exchange Commission (SEC) request for public comment on its proposed amended rule changes entitled "The Enhancement and Standardization of Climate-Related Disclosures for Investors."[1] The purpose of the rule change is to codify several decades of investor articulation of risks and proposals for reform of company and market-wide disclosures on climate change. The issues have been raised in countless meetings between shareholders and companies, shareholder reports, annual shareholder resolutions, derivative actions, contentious board votes, class action and other litigation, media reports and op-eds, and disinvestment from the sector. Investor concerns have grown as the financial instability of the coal, oil and gas sectors has increased, and scientific red flags and demonstrable weather-related events have become commonplace.

The publication of the proposed rules from the SEC and a companion volume published by the IFRS Foundation has raised expectations that climate change disclosure by publicly traded corporations will improve.[2] The regulations contemplate broad structural reform in disclosure rules covering corporate reporting. In this respect, the document is a compendium of best practices that can be used by investors—whether or not the standards and regulations achieve final promulgation, are delayed by legal or political means, or abandoned altogether.[3]

The failure of the United States government to adopt these standards or something like them will harm its credibility on the world stage. Whether or not they are adopted, this regulatory effort is likely to bolster the development of a public consensus empowered by market forces that supports an energy transition driven by the benefits of increased diversification and less reliance on the oil and gas sector.

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[1] United States Securities and Exchange Commission. The Enhancement and Standardization of Climate-Related Disclosures for Investors, 17 CFR 210, 229, 232,239 and 249, [Release Nos. 33-11042; 34-94478; File No. S7-10-22], RIN 3235-AM87. March 21, 2022.
[2] International Sustainability Standards Board. IFRS® Sustainability Disclosure Standard: Exposure Draft. March 2022 (IFRS).
[3] The proposed regulations in the United States have already been opposed by SEC Commissioner Heather M. Pierce. See: U.S. Securities and Exchange Commission. We are Not the Securities and Environment Commission—At Least Not Yet. March 21, 2022.

Comment

1. **The proposed regulation needs to provide for ongoing collaboration with international efforts to standardize climate-related disclosure.**

The rule change document includes lengthy background and discussion sections that provide transparency into the thinking behind proposed disclosure reforms. The SEC takes note that in the absence of a global consensus on climate reporting, a host of organizations have come to fill the information void with independent model questions and formats. The result of the many systems and methods of reporting has been an inconsistent and fragmented marketplace of climate-related risk data. [4]

The SEC identifies two initiatives: The Task Force on Climate Related Financial Disclosures (TCFD) and the GHG Protocol. The proposed SEC rules are patterned on some of the conceptualizations offered in these regulatory schemes. The SEC's adoption of TCFD and GHG Protocol methods and standards is designed to decrease compliance costs by maximizing common reporting requirements.

The SEC adoption of various segments of other global protocols is positive. It confers legitimacy on valid information systems that provide confidence to investors. Such adoption by the SEC also moves a global consensus forward on climate-related disclosures. The SEC might consider adopting the recently released IFRS Sustainability Disclosure standards in total.[5] The IFRS standards are, in the main, consistent with the SEC approach. As discussed below, the SEC proposed rules have a number of substantive differences with IFRS.

The SEC could provide exception-based guidance *vis-a-vis* the IFRS disclosure standards. This would enable companies to rely on one standard worldwide and to report differently in the United States where the SEC has identified variations in policy.

As an alternative, the SEC could encourage U.S. corporations to voluntarily provide additional information that is required under the IFRS sustainability standards.

2. **Regulations need to unequivocally require Scope 3 emissions reporting for all companies.**

IFRS standards require reporting on Scope 1, 2 and 3 emissions. The SEC, while adopting the Scope 1, 2 and 3 system created by the GHG Protocol, exempts companies from reporting on Scope 3 emissions based on a materiality standard.[6] The SEC exemption would ultimately require the largest emitters—the global integrated oil and gas companies to evaluate and report on Scope 3 emissions. However, the extensive discussion on exemptions in the SEC document provides a basis for most large companies to challenge the reporting requirement.

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[4] See SEC, *op. cit.*, pp. 30-41, for the complete discussion of the issue and identification of significant initiatives to collect information

[5] International Sustainability Standards Board, *op. cit*.

[6] For a full discussion of the Scope 3 disclosure requirement and the rationale for it, see SEC, pp. 155-87.

The IFRS document also acknowledges the difficulty raised by the current state of Scope 3 reporting but concludes that disclosures are necessary in large measure because of the weaknesses:

> "The disclosure of Scope 3 GHG emissions involves a number of challenges, including those related to data availability, use of estimates, calculation methodologies and other sources of uncertainty. However, despite these challenges, the disclosure of GHG emissions, including Scope 3 emissions, is becoming more common and the quality of the information provided across all sectors and jurisdictions is improving. This development reflects an increasing recognition that Scope 3 emissions are an important component of investment-risk analysis because, for most entities, they represent by far the largest portion of an entity's carbon footprint."[7]

The size of the carbon footprint offers a compelling reason why companies should be asked to develop Scope 3 disclosure data. IFRS also notes that enactment of Scope 3 disclosure requirements is likely to improve the quality of reporting. Since one of the reasons offered by the SEC for granting an exemption from Scope 3 reporting is weaknesses in reporting data, then adoption of widespread reporting on Scope 3 emission is likely to lead to innovative ways of addressing the problem.

Scope 3 emissions tend to be multiples of Scopes 1 and 2. The metric requires systemic thinking about the entire value chain of a reporting company's operations. The extent of this analysis should lead to more comprehensive decisions by managers. It will also lead to increasingly robust discussions framed around the global nature of climate risk as well as the opportunities and challenges to find solutions. The concern that the initial stages of Scope 3 reporting will result in disparate reporting is legitimate. Investors, however, are more concerned about comparing company strategies and goals. As Scope 3 reporting improves, this can only lead to a broader context for investors to render judgment on corporate planning and strategic initiatives.

3. Regulations need to require disclosure that executive compensation is tied to climate-related goals.

The linkage of executive compensation to climate-related goals is a significant indicator to investors that the company is serious about climate change. The contentious debate over climate change has undermined investor and public confidence in corporate management particularly in the oil and gas sector.

The SEC notes that many organizations commenting on the scope of disclosure are asking for companies to link executive compensation to the attainment of climate-related goals. The SEC rejects this explicit requirement. The SEC contends that its existing disclosure rules regarding the linkage of corporate goals to compensation generally provides sufficient incentives for companies to include climate related goals as part of compesnsation review.[8] The IFRS disclosure protocols opt to specify that companies must disclose any linkage between climate goals and executive compensation.[9]

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[7] International Sustainability Standards Board, *op. cit*., pp. 22-23.
[8] SEC, *op. cit.*, p. 102
[9] International Sustainability Standards Board, *op. cit*., p. 42.

The current system has not resulted in the broad adoption of disclosure requirements linking executive compensation with climate change goals. On page 340 of SEC's proposed rules (footnote 824), the agency notes that only 6% of companies now disclose the existence of standards that link executive compensation with climate-related goals. The SEC notes that the practice is "far from commonplace." Instituting an executive compensation disclosure protocol for climate would signal the need for companies to make the practice a corporate priority that needs to be widely adopted.

Sincerely,

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