United States Senate
WASHINGTON, DC 20510

June 17, 2022

Via Electronic Mail

The Honorable Gary Gensler
Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

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

Dear Chair Gensler:

We write to respectfully request that the Securities and Exchange Commission (SEC) finalize, as proposed, The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release No. 33-11042, File No. S7-10-22 (the Proposal),[1] which would require periodic disclosures by public companies of certain climate-related financial statement metrics and related information in a note to the audited financial statements. We also respectfully request that the SEC provide a list of non-exclusive criteria that public companies should consider in determining whether a director has expertise in climate-related risks.

Climate change poses risks to the financial performance of public companies over all time horizons. We support the Proposal because it would improve the transparency and consistency of reporting those risks. Requiring public companies to provide high-quality and standardized disclosures of climate risks would help our constituents manage their own financial risks and determine where to allocate capital. The Proposal builds on the SEC's existing rules and guidance in these areas, all of which are grounded in the agency's obligation to promote full and fair disclosure.

We also generally support the comments on the Proposal included in the letter submitted by our colleagues led by Senator Schatz. That letter focuses on the proposed changes to Regulation S-K, which is intended to complement the comments in this letter focused on Regulation S-X.

The Senate Banking Committee, on which we all serve, has held several hearings that have demonstrated how investors and markets would benefit from a disclosure regime that

[1] The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release No. 33-11042, File No. S7-10-22, 87 FR 21334, https://www.federalregister.gov/documents/2022/04/11/2022-06342/the-enhancement-and-standardization-of-climate-related-disclosures-for-investors.

provides more decision-useful information when it comes to climate risk.[2] We appreciate that the Proposal incorporates lessons learned from our Committee's hearings.

I. The SEC has authority to require registrants to disclose climate-related financial statement metrics in notes to financial statements.

Congress provided the SEC with specific authority to promulgate disclosure requirements that are "necessary or appropriate . . . for the protection of investors."[3] That authority appears in several areas in the securities laws and for decades has served as the basis for detailed disclosures. Even though critics question the SEC's authority to issue the Proposal,[4] a basic review of both longstanding and more recent disclosure requirements shows the SEC is well within its power. The disclosure framework for registration statements created by the Securities Act of 1933 includes detailed information required by Schedule A of the Act.[5] Further, Congress empowered the SEC to waive disclosure of some information, but also granted it power to require "other information . . . as the Commission may by rules or regulation require as being necessary or appropriate in the public interest or for the protection of investors."[6] This ability to work within its statutorily prescribed mandate, but also keep pace with market developments for the benefit of investors, ensures the SEC can promote disclosures that "will promote efficiency, competition, and capital formation."[7]

Using the powers Congress provided, the SEC has augmented disclosure requirements to address topics that have become more important over the years. These enhanced disclosures were based on existing law and include details on executive compensation, related-party transactions, asset-backed securities, and sector specific information on banks, oil and gas companies, and mining firms.[8] Likewise, based on existing regulations, the SEC in 2010 issued guidance for disclosures relating to climate-change developments arising from changes in U.S. or international law or policy, business trends, or climate related costs or disruptions.[9]

II. The proposed new article of Regulation S-X (Article 14) is important to our investor constituents.

Investors in our states have long sought disclosure of the assumptions and estimates behind the financial impacts associated with physical events and transition activities. For

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[2] *See*, *The Application of Environmental, Social, and Governance Principles in Investing and the Role of Asset Managers, Proxy Advisors, and other Intermediaries: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs*, 116th Cong. (2019); *21st Century Economy: Protecting the Financial System from Risks Associated with Climate Change, Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs*, 117th Cong. (2021).
[3] 15 U.S.C. 77g; 15 U.S.C. 78l, 78m, and 78o.
[4] Statement of Patrick J. Toomey, U.S. Senator, on SEC Proposal to Mandate New Global Warming Disclosures, Mar. 21, 2022, https://www.banking.senate.gov/newsroom/minority/toomey-statement-on-sec-proposal-to-mandate-new-global-warming-disclosures.
[5] 15 U.S.C. 77aa; that framework also applies to periodic reporting under the Securities Exchange Act of 1934.
[6] 15 U.S.C. 77g(a)(1).
[7] 15 U.S.C. 77b(b); 15 U.S.C. 78c(f).
[8] Jill E. Fisch, et al., Comment Letter on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 6, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20130354-297375.pdf.
[9] Commission Guidance Regarding Disclosure Related to Climate Change, Release Nos. 33-9106, 34-61469, FR-82 (Feb. 8, 2010).

example, nearly 5,000 global investors with more than $100 trillion in assets under management (AUM) have pledged to demand appropriate environmental, social, and governance (ESG) disclosures by the entities in which they invest, including standardized reporting and the integration of ESG issues into annual financial reports.[10] A second group of almost 750 investors with more than $52 trillion in AUM has asked governments to implement mandatory climate risk disclosure requirements to ensure that disclosures are "consistent, comparable, and decision-useful."[11] And a third group of investors with $2.7 trillion in AUM has asked the SEC to require that climate risk disclosures be included in quarterly and annual financial reports to support comparisons across firms.[12] These three groups include investors that manage trillions of dollars in retirement savings for our constituents. The Proposal is appropriately responsive to their requests for these disclosures.

Our constituents would find it especially useful for issuers to disclose climate-related financial risk in a standardized way.[13] Seventeen state Treasurers, including from states that we represent, have said that "[l]ong-term investment and policy decisions are undermined without access to meaningful, standardized . . . climate risk data."[14] According to officials in Rhode Island, standardized climate risk information is important to decide where to invest public pension funds, to meet obligations as stewards of taxpayer dollars, and to protect the state's fiscal health.[15] Several state attorneys general agree that standardized information in the notes to the financial statements would provide our constituents with a basis to understand and measure the impact of climate change on their retirement savings.[16] The Proposal would replace the existing disclosure regime, which does not provide comparable or useful information, with a new disclosure regime that would.

III. Requiring disclosure in notes to financial statements would appropriately subject climate-related financial information to audits by public accounting firms and bring this information under public companies' internal controls.

In order to be useful to investors, climate-related financial disclosures must be audited by an independent registered public accounting firm and brought within the scope of a company's

[10] Principles for Responsible Investment, Principle #3, https://www.unpri.org/about-us/what-are-the-principles-for-responsible-investment. In Principle #4, these investors have also committed to support regulatory developments that enable implementation of the Principles.
[11] 2021 Global Investor Statement to Governments on the Climate Crisis, https://theinvestoragenda.org/wp-content/uploads/2021/09/2021-Global-Investor-Statement-to-Governmentson-the-Climate-Crisis.pdf.
[12] Letter from Investors With over $.27 Trillion in AUM (June 9, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8911752-244393.pdf
[13] 2019-2020 NACD Corporate Governance Survey, at 27 (reporting that surveyed directors cited "lack of uniform disclosure standards" and "difficulty defining materiality" are the two most challenging issues in providing oversight of ESG matters).
[14] Letter from State Treasurers (Oct. 21, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-9349291-261170.pdf
[15] RI General Treasurer, "Treasurer Magazine Urges Walmart to Reduce Dangerous Hydrofluorocarbon (HFC) Emissions" (Jan. 13, 2021), RI General Treasurer, "Treasurer Magazine Announces Nearly 50 Percent Reduction in RI Pension Fund Exposure to Fossil Fuels (Apr. 21, 2021), https://www.ri.gov/press/view/40195; https://www.ri.gov/press/view/40943.
[16] Letter from Twelve State Attorneys General (June 14, 2021), https://www.marylandattorneygeneral.gov/news%20documents/061421_SEC_Climate_Disclosure.pdf.

internal control over financial reporting. Our constituents have found the current voluntary disclosure regime to be flawed because it relies on management's assertions to provide assurances about data quality. By including climate-related risk disclosure in the financial statements, the Proposal would instead require public companies to rely on independent outside firms for such assurances. This will result in more decision-useful information because investors can presume it to be accurate, truthful, and complete.

Audits and internal controls reinforce the benefits of standardization discussed in Section II. Outside firms' audit procedures and companies' systems of internal controls are designed, in large part, to ensure that financial statements are prepared in accordance with generally accepted accounting principles. That means investors would have confidence that each public company is using consistent, verifiable procedures to validate the accuracy of climate-related financial information. Consistent accounting procedures facilitates comparability.

Audits and internal controls also raise the standard of conduct for management and auditors. Public companies and their auditors would have powerful incentives to ensure accurate reporting of climate-related financial information because penalties for misstatements and weak internal controls can be severe. These incentives will provide investors with an additional layer of reasonable assurance regarding the reliability of climate-related financial information and will provide a broader set of remedies to hold public companies and their auditors accountable for greenwashing financial statements.

IV. The SEC should finalize as proposed the expenditure metrics, financial inputs and assumptions, and financial estimates related to severe weather events and transition activities.

We respectfully request that the SEC finalize the new Article 14 to the SEC's Regulation S-X, as proposed. Regulation S-X provides financial statement disclosure requirements for registration statements used in public offerings and for ongoing reporting by public companies. The new Article 14 would require disclosure about financial statement metrics, along with contextual information to enable investors to understand the impact of climate change on companies' bottom lines.

These metrics are necessary for investors to rely on the information reported in companies' financial statements. The quantitative information required by proposed Regulation S-X is necessary to understand the forward-looking qualitative statements in proposed Regulation S-K. These disclosures would work hand-in-glove to inform investors' assessments about whether public companies are on track to follow through on their climate commitments. Far from requiring superfluous information, quantitative disclosures are essential to providing decision-useful data and context for qualitative disclosures. For example, quantifying the impact of climate on a company's capital expenditures would help investors determine whether a company is dedicating sufficient resources to achieve its net-zero commitments.

V. The SEC should finalize a specific numeric threshold for financial impact metrics, rather than adopt a materiality standard.

The Proposal would require public companies to disclose the financial impacts of severe weather events, transition activities, and climate-related risks on a line-by-line basis at a 1% impact threshold. We urge the SEC to adopt this bright-line numeric threshold for these disclosures to facilitate comparable and consistent reporting across firms.

This approach is grounded in other elements of the SEC's continuous public disclosure regime, which public companies have significant experience applying. For example, a 1% threshold is already used for several other items in Securities Exchange Act reporting.[17] A 5% threshold is used for others.[18] Bright-line percentage tests have long been used as a proxy in Regulation S-X for determining what kind of financial information must be disclosed. The new Article 14 would fit within this established and well-understood framework.

Furthermore, accountants have the experience necessary to apply quantitative percentage thresholds. For example, an SEC staff bulletin has suggested that accounting firms may apply a quantitative benchmark of 5% as a "rule of thumb" to develop preliminary assumptions about whether a misstatement or omission in a company's financial statements is likely to be material.[19] Market practice is to use this threshold as a first step to consider materiality, which accounting firms routinely do for all aspects of the financial statements.

Public companies already are required to disclose information for each line item in their financial statements, without regard for materiality. For example, each public company must disclose executive compensation, related party transactions, and share repurchases are required with *no* numeric thresholds at all.[20] Executive compensation rarely has a material effect on profitability, but investors highly value information about compensation because it helps them assess corporate strategy and understand whether management has the right incentives to maximize shareholder value. Disclosure of climate-related financial risk on companies' bottom lines falls into the same category.

We urge the SEC to exercise its discretion to finalize quantitative thresholds for disclosing climate-related risk in financial statements. Imposing a materiality threshold would limit the comparability and the decision-useful nature of the financial statement disclosures because bright-line metrics better facilitate comparisons across similar firms by investors.

VI. The SEC should provide a list of non-exclusive criteria that public companies should consider in determining whether a director has expertise in climate-related risks.

We agree with the SEC's assertion that "[w]ith detailed information about climate expertise among the registrant's directors, investors could more effectively evaluate the firm's governance practices related to the identification and management of climate-related risks."[21] However, the Proposal does not provide guidance or criteria regarding such expertise. We are aware of disparities and confusion surrounding what companies believe constitutes climate

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[17] 17 CFR 210.5–03.1(a); 17 CFR 210.12–13; 17 CFR 229.404(d).
[18] 17 CFR 210.4-08(h)(ii); 17 CFR 210.5-02(d); 17 CFR 210.6-07; 17 CFR 210.7-.04.
[19] SEC Release No. SAB 99 (Aug. 12, 1999).
[20] 17 CFR 229.404; Form 10Q, Item 2(e); 17 CFR 229.402.
[21] Proposal, at 21432.

expertise among existing directors. Providing a non-exclusive list of criteria that a registrant should consider in reaching a determination on whether a director has climate expertise would result in more standardized approaches across registrants, which in turn would alleviate confusion. This approach would also mirror the SEC's recently proposed approach to disclosure of directors' cybersecurity expertise and its longstanding approach to determining financial expertise on the audit committee.

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Thank you for proposing rules regarding this important investor protection topic. Please keep our staffs informed of the SEC's progress on improving climate-related financial risk disclosures by public companies.

Sincerely,

Jack Reed
United States Senator

Sherrod Brown
United States Senator

Chris Van Hollen
United States Senator

Elizabeth Warren
United States Senator

Tina Smith
United States Senator