

June 17, 2022

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

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

Dear Ms. Countryman:

This letter is submitted on behalf of Business Roundtable, an organization whose CEO members lead America's largest companies, employing over 20 million workers. The total value of Business Roundtable companies, over \$20 trillion, accounts for half the value of all publicly traded companies in the United States. Business Roundtable companies spend and invest over \$7 trillion a year, helping sustain and grow tens of thousands of communities and millions of medium- and small-sized businesses.

We appreciate the opportunity to comment on the proposed rules (the "Proposal") issued by the Securities and Exchange Commission (the "Commission" or "SEC") on March 21, 2022, to require expansive new climate-related disclosures by registrants.¹ While Business Roundtable supports efforts to enhance climate-related disclosure,² we believe a number of key provisions in the Proposal, as drafted, are unworkable and would impose requirements that could not be satisfied in the manner and timeframe proposed, and may not result in decision-useful information for investors. Among other concerns, the Proposal would require registrants to produce overwhelming amounts of information that would not be comparable, reliable or meaningful, much less material, for investors. The Proposal would also subject registrants to significant liability for disclosures that inherently involve a high degree of uncertainty. For these reasons, as well as those laid out below, we urge the SEC to publish a revised proposal addressing these concerns for further comment.

¹ The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release Nos. 33-11042; 34-94478 (Mar. 21, 2022), <https://www.sec.gov/rules/proposed/2022/33-11042.pdf> [hereinafter *Proposal*].

² See Bus. Roundtable, Comment Letter on Request for Public Input on Climate Change Disclosures (June 11, 2021), <https://www.sec.gov/comments/climate-disclosure/cll12-8906771-244124.pdf> [hereinafter *BRT 2021 Comment Letter*].

CLIMATE DISCLOSURE LEADERSHIP

Business Roundtable has been a leader in advocating for a more comprehensive, coordinated and market-based approach to addressing climate change. Business Roundtable shares the concerns articulated by investors and other stakeholders that many parts of the economy are facing growing risks from climate change, including physical risks (e.g., extreme weather) and transition risks (e.g., technological and market shifts and regulatory and policy risks).

Information about these risks and how companies are addressing them has become increasingly important to a wide range of stakeholders, including certain investors. Business Roundtable companies have responded to the demand for this information by making robust voluntary climate-related disclosures and prioritizing the disclosure of information of greatest interest to their stakeholders. Our members include some of the best in class when it comes to climate disclosure. An overwhelming majority have governance structures in place to oversee climate risks, have integrated climate considerations into their risk management and Board processes, and report Scope 1 and Scope 2 GHG emissions as well as, to some degree, Scope 3 GHG emissions.

The high bar our members have set for voluntary ESG disclosures has helped drive broad improvement in the field and is providing more valuable information for investors. Absent action by the SEC, we expect voluntary disclosure on ESG matters, including climate, to continue to increase and improve each year, and companies are already subject to mandatory disclosure in other countries. At the same time, standards and tools for making effective and reliable climate disclosures are diverse and incomparable. Business Roundtable members have broad concerns that the prescriptiveness of the SEC's proposed disclosure requirements does not allow for the flexibility needed to provide meaningful disclosures tailored to a particular company's business, as well as concerns around the operability of the proposed Regulation S-X provisions. Members are also concerned that many of the proposed disclosures will significantly increase companies' exposure to legal risk without corresponding benefit to investors.

As noted, Business Roundtable has supported, and continues to support, more transparent and comparable climate-related disclosures with regard to the risks and business opportunities associated with climate change. In 2020, Business Roundtable announced support for the goals of the Paris Climate Agreement and a suite of policies to help achieve those goals.³ As part of that statement, Business Roundtable noted the following about the role of disclosure: "American corporations must continue to lead the way in driving efficiency, advancing a spectrum of low to negative emissions technologies and reducing GHG emissions. Many companies seek to be transparent around their approaches and progress toward those goals. It

³ Business Roundtable: Market-Based Solutions Best Approach to Combat Climate Change (Sept. 16, 2020), <https://www.businessroundtable.org/business-roundtable-market-based-solutions-best-approach-to-combat-climate-change>.

is important for companies to continue to engage on, and disclose when appropriate, material risks that may be driven by climate change as well as the business opportunities associated with advancing low-carbon solutions. Effective disclosures should focus on a company's approach to risk management and its connection to the company's strategy and governance. These disclosures should be voluntary and industry supported and should consider leading disclosure frameworks."⁴ This position recognizes that although important, disclosures simply will not solve the problem. These are complex issues that need to be solved through the legislative process.

More recently, and as noted, in 2021, Business Roundtable submitted a letter to the SEC in response to then-Acting Chair Lee's request for public input on a potential climate disclosure rule.⁵ The letter acknowledged increasing interest in climate-related disclosures; expressed support for the SEC proposing climate disclosure rules and providing the opportunity for public input; and provided constructive input on how a rule could increase clarity on disclosure requirements and lead to more consistent, comparable and decision-useful disclosures. Business Roundtable urged continued reliance on a principles-based approach tied to traditional concepts of materiality but recognized some specific metrics – such as Scope 1 and Scope 2 GHG emissions – could be appropriate to consider. The letter also addressed a number of important considerations including, among others, providing required disclosures on a different schedule than the Form 10-K to allow appropriate preparation time and permitting the information to be furnished instead of filed. We continue to hold these views.

THE SEC'S PROPOSAL

As noted, while Business Roundtable supports enhanced climate disclosures, significant components of the Proposal are unworkable as proposed, while others could benefit from being recalibrated to take a more practical approach. In particular:

- The Proposal fails to acknowledge or address the increased liability risk the new disclosure requirements would generate;
- The proposed Regulation S-X financial reporting requirements are unworkable;
- The proposed Scope 3 GHG emissions disclosure requirements are overly burdensome and unlikely to result in comparable, investor-useful information;
- The Proposal would require an overwhelming amount of disclosure that is not tied to materiality, would not provide useful information for investors, and could result in disclosure of sensitive information and/or chill development of best practices;
- The Proposal presents significant implementation challenges; and

⁴ Business Roundtable, Addressing Climate Change: Principles and Policies 3 (Sept. 2020), <https://s3.amazonaws.com/brt.org/Business-RoundtableAddressingClimateChangeReport.September2020.pdf>.

⁵ Business Roundtable 2021 Comment Letter, *supra* note 2.

- The Proposal's cost-benefit analysis is fundamentally flawed and significantly understates the ultimate compliance costs of the rules.

We identify and discuss below these primary areas of concern; however, we urge the SEC to more broadly reevaluate the overall scope of the Proposal and publish a revised proposal for further comment.

i. The Proposal Fails to Acknowledge or Address the Increased Liability Risk the New Disclosure Requirements Would Generate

While Business Roundtable companies make extensive climate risk disclosures, understanding of climate risk is continually evolving and, by definition, involves a high degree of uncertainty. It is not appropriate in this context to impose additional liability risk on firms by requiring them to file, rather than furnish, climate-related disclosures. Moreover, imposing significant liability risk on companies may disincentivize them from setting further climate goals.

The Proposal would require expansive new disclosures that are unprecedented in scope and level of detail and, in some instances, require the use of assumptions and/or rely on data from third parties, but does not adequately address the increased liability that will come with such new types and quantities of disclosure. The Proposal notes that various required new disclosures such as targets, goals and scenarios may be forward-looking in nature and therefore covered by the Private Securities Litigation Reform Act (PSLRA) safe harbor for forward-looking statements if all conditions are met. However, the Proposal does not seem to recognize or acknowledge the significant liability risk that will be imposed by requiring this type of information to be filed in Form 10-K. This risk cannot adequately be addressed through the SEC's reference to the potential availability of the PSLRA's safe harbor for forward-looking statements. Further, as described in the section regarding Scope 3 emissions below, the proposed safe harbor for Scope 3 emissions disclosure would not provide adequate protection for this information.

Any final rule should, at a minimum, make clear that the PSLRA safe harbor is available to protect this information, and the safe harbor proposed for Scope 3 emissions should be strengthened. Further, we urge the SEC to allow such disclosure to be provided in a separate report that is deemed furnished rather than filed.

ii. The Proposed Regulation S-X Financial Reporting Requirements Are Unworkable and Should Not Be Included in the Final Rule

The Proposal would require companies to implement processes and procedures to disaggregate the financial impacts of climate-related impacts and expenditures (subject to external audit) and provide disclosure in a footnote to the audited financial statements if the amount exceeds 1 percent of any relevant line item in the financial statements.

The measurements required to be included are inherently uncertain in three distinct respects: (a) it is impossible to accurately disaggregate the impacts of *realized* severe weather events and transition activities from ordinary ongoing business operations; (b) it is highly complex to accurately estimate the potential future (i.e. as yet *unrealized*) impacts of severe weather events and transition activities by financial statement line item; and (c) estimating the impacts of both realized and unrealized events or transition activities requires developing a counterfactual of what would have happened – but for the event or activity – and this is a very challenging undertaking from an analytical standpoint. Compounding these concerns, there are currently no universally accepted standards for measuring climate-related financial impacts and expenditures.

Standards and definitions

The proposed rule would require disclosures related to a “severe weather event.” It is unclear how a “severe weather event” would be defined or applied, and “weather” and “climate” appear to be conflated. There is currently no accepted standard definition for either “severe weather event” or, crucially, guidance on how the baseline definition of such events should be adjusted by location, by industry, and over time. Different industries – and companies within a given industry – are likely to have different views on what constitutes a “severe weather event” at a given point in time, in a given location, as well as over time. The oil and gas, electricity, shipping and transportation industries, for example, regularly contend with disruptions due to seasonal storm activity. Subsequently, electric utilities are subject to fluctuations in commodity prices due to a variety of factors which can include severe weather events as well as the potential disruptions from the industries noted above. Similarly, the hospitality industry historically has had to navigate the impacts of periodic weather events, including hurricane season. Would such companies now have to assume all disruptions are climate related? More broadly, it is not clear how one would isolate the financial impacts of severe weather and other natural conditions using any threshold. Therefore, requiring registrants to estimate the impacts of severe weather events will result in non-comparable, non-decision useful information for investors.

In addition, under the Proposal, financial impacts can include “changes to revenue or costs from disruptions to business operations or supply chains.” The notion of reporting “lost revenues” is inconsistent with Generally Accepted Accounting Principles, is highly subjective and would be of questionable value. While certainty with regard to how a particular climate event or transition may impact revenue or costs might be possible with a contract that has defined quantities, prices and deliveries that are disrupted, this certainty will not exist in most instances. For example, for commodities, it is not possible to determine the impact of discrete climate events versus supply/demand factors, geopolitical impacts and other factors that would impact revenue from a subsequent change in commodity price. Line items could be impacted by multiple factors, including climate change; may only be indirectly impacted; or may be

mitigated or offset by other factors. Attempting to isolate and quantify the impacts of climate change would require a level of precision and certainty that does not exist. Additionally, there are currently no accounting rules that dictate how a company should or could classify the interactions between the weather-related costs, sales, prices, shopping patterns, preplanned renovations, capital expenditures and other components of business decision-making.

Further, the proposed requirements for transition activities create even more ambiguity and would potentially reduce comparability. For expenditures related to transition activities, the Proposal provides that “a registrant may be required to disclose the amount of expense or capitalized costs, as applicable, related to research and development of new technologies, purchase of assets, infrastructure, or products that are intended to reduce GHG emissions, increase energy efficiency, offset emissions (purchase of energy credits), or improve other resource efficiency.” This is incredibly broad and would encompass any activity undertaken that is “intended to” improve the more efficient use of any resource. This would seem to encompass ordinary course of business attempts to be more energy efficient that are not necessarily intended to address climate matters (e.g., using longer lasting light bulbs or energy efficient appliances). Arguably, it could encompass buying anything new (and any time spent internally to support such a purchase) if it is motivated even in part by the intent to be more efficient. Therefore, it would not only apply to converting a vehicle fleet to electric vehicles (EVs) but could also apply to purchases of vehicles with better gas mileage. Or more generally, the Proposal could capture ordinary business activities, such as equipment replacement, construction and similar activities. Do you compare the cost of the replacement or construction versus a hypothetical cost of a less-sustainable alternative? It is therefore unclear how a company would consider intent and separate activities that improve efficiency but were not necessarily intended to reduce the impacts of climate change (e.g., where the intent was solely to cut costs or to replace aging equipment).

Even when climate-motivated activities can be identified, it is unclear what would be reported. For example, if a company takes environmental considerations into account when building a facility, would it report the total cost, individual items like solar panels and EV chargers, or some hypothetical difference between what they built and a facility without such environmentally friendly features? Without clarification, companies would have to exercise significant judgment and could come to vastly different conclusions, thus undercutting the SEC’s stated goal of generating consistent, comparable and decision-useful disclosures.

One percent threshold

The proposed 1 percent threshold is not tethered to any relevant financial reporting concepts, including materiality, and would elevate climate to be the single-most significant financial risk factor for registrants. This requirement would impose excessive costs to report immaterial information and produce disclosure that is not comparable across registrants and in turn not useful to investors. Furthermore, the 1 percent threshold does not reflect the way registrants

currently track, verify, document or report expenses, and would require extensive new investment in systems, processes, personnel and training. Climate risks generally do not manifest themselves at the individual asset-level and a company's assets are usually part of a larger process or system. For example, an individual electrical substation is part of a larger power distribution system and that feeds into an interconnected energy system. Thus, assessing and understanding climate risks is more appropriately considered at a broader level and it would be very challenging to meaningfully translate this type of review into any specific threshold level (let alone 1 percent).

The SEC acknowledges in the Proposal that current disclosure requirements would elicit material financial impacts on the financial statements but asserts that "the proposed climate-related financial statement metrics should provide additional transparency into the impact of climate-related events on information reported in the financial statements that would be relevant to investors when making investment or voting decisions." The SEC fails, however, to explain why that additional transparency is needed, much less at a 1 percent line-item level. Even were the SEC to adopt a line-item disclosure requirement without regard to materiality, 1 percent is too low by any measure, including providing decision-useful information to investors, and conflicts with how companies look at their own financial results. Further, increasing the threshold to some higher number would not solve the workability difficulties.

Necessity and appropriateness

Putting aside these practical challenges, the proposed requirement is unnecessary, as the items to be disclosed can be addressed outside the financial statements. Information called for by the Proposal is of the type that is already required to be included in other portions of SEC reports, *if material*. Accordingly, it would be more appropriate to require material, decision-useful information about financial metrics outside financial statements or, in compliance with the 2010 Commission Guidance Regarding Disclosure Related to Climate Change (2010 Guidance), to include material climate-related risks in financial statements.

Finally, we note that while the costs to audit the proposed information are not knowable, it is not conceivable that an audit of information that could impact every line item in the financial statements could be completed for anywhere near \$15,000 (the cost estimate provided in the Proposal) in light of the high amount of judgment and estimation involved. Since under the Proposal such disclosure would be subject to audit and within the scope of the internal control over financial reporting (ICFR) requirements, the result would be an increase in audit expense, which the SEC grossly underestimates. Further, the need for internal controls and assurance associated with including this information in financial statements would require enormous investments of both capital and management time and attention, wherever the disclosure threshold is set, which exacerbates the already-significant timing and cost challenges presented by the Proposal and discussed further in this letter.

For all these reasons, the Regulation S-X financial reporting requirements present significant challenges without the corresponding benefit of consistent, comparable or decision-useful disclosures. We do not believe the challenges could be remedied through changes to the Proposal and therefore strongly believe the proposed new financial statement note disclosure should not be included in the SEC's final rules in any form.

iii. *The Proposed Scope 3 GHG Emissions Disclosure Requirements Are Overly Burdensome and Unlikely to Result in Comparable, Investor-Useful Information*

Reliability and comparability

While a majority of publicly-held Business Roundtable companies voluntarily report, to some degree, Scope 3 emissions, many companies still have limited systems in place to identify and disclose Scope 3 emissions on a categorical basis and reporting what might be the most significant and difficult categories remains challenging. The Proposal fails to acknowledge that even within a given industry, there is variability today in how the best-in-class climate reporters evaluate the significance of Scope 3 categories and report emissions, and practices and methodologies are expected to evolve in the near-term. There is value in continued flexibility as understandings of and frameworks related to Scope 3 emissions continue to evolve.

As drafted, the Proposal does not sufficiently acknowledge that unlike Scope 1 emissions and to some extent Scope 2 emissions, Scope 3 emissions are based largely on estimation and broad assumptions related to, among other factors, transportation modes and distances, packaging and use of products. The methodologies presented in the GHG Protocol for Scope 3 emissions are designed to allow for significant flexibility to acknowledge that a company's (and an industry's) data sources and accounting mechanisms have not reached maturity. The variability in this data set is one reason inclusion of such data in the Form 10-K is particularly problematic and could mislead investors by implying a level of precision and accuracy inherently not present. Additionally, while broad estimates can be used to produce a figure, that figure will almost certainly not reflect the actual differences in Scope 3 emissions between otherwise similar businesses.

In addition to the potential data variability, Scope 3 emissions are largely outside a registrant's control. While some vendors/suppliers are increasingly able to provide reliable data, currently Scope 3 emissions are often based on assumptions and external information acquired from suppliers or calculated based on emissions from other sources in the registrant's value chain. A lack of primary data from the supply chain often pushes companies to use less accurate spend-based methodologies with generic emissions factors, which can lead to potentially inaccurate and unreliable results. While the generation and availability of supply chain information to support available Scope 3 emissions methodologies is improving, many industries currently lack the comprehensive supply chain information that would allow companies to disclose decision-useful information in this area. For example, in some cases, the Proposal points to standards to

support disclosure by specific industries, such as the Partnership for Carbon Accounting Financials' (PCAF) Global GHG Accounting and Reporting Standard for financial registrants but fails to acknowledge the nascent stage of development of such standards (e.g., the PCAF currently only addresses a limited universe of asset classes).

Timing and liability

Producing reliable, comparable emissions data in time to be filed quarterly and in the Form 10-K would be excessively costly, if not impossible, particularly for companies that would need to move to a quarterly reporting system. For the largest companies, filing this information in the Form 10-K would be unworkable as it would allow only 60 days after the end of the registrants' fiscal year—providing not only a short timeline but also conflicting with the schedule on which companies currently report to other governmental bodies such as the Environmental Protection Agency (EPA). This would result in the need for significant estimation, especially for the fourth quarter of the fiscal year, and could result in inconsistent and confusing publicly available information.

Additionally, the liability associated with filing Scope 3 emissions estimates in the Form 10-K is not sufficiently addressed through the proposed limited safe harbor. Under the Proposal, a registrant would not be subject to liability for misstatements or omissions in its Scope 3 emissions disclosures unless “it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.”⁶ This safe harbor, as proposed, would not adequately protect registrants because it does not recognize the estimation and uncertainty associated with Scope 3 emissions data. SEC Rule 175,⁷ like the Proposal, requires disclosures to be prepared in good faith and with a reasonable basis. Congress determined this safe harbor standard to be insufficient in another context when it enacted the PSLRA. Through the PSLRA, Congress codified a more robust safe harbor that has been successfully implemented for decades, enabling companies to responsibly provide forward-looking guidance to investors.

If Scope 3 disclosure is mandated, strong safe harbor protection, similar to the PSLRA safe harbor but available for all Scope 3 emissions disclosures (not just for forward-looking statements), and a more reasonable timeline for reporting should be explicitly provided to yield higher quality information to investors, and information should be furnished in a separate report rather than filed in the Form 10-K. Under this approach, protection would be available if Scope 3 emissions data is accompanied by meaningful cautionary language explaining why the estimates may not be accurate.

⁶ Proposal, *supra* note 1, at 474.

⁷ 17 CFR § 230.175 (2022).

Divergence from existing practices

The proposed Scope 3 emissions requirements deviate significantly from the way in which companies currently consider and report Scope 3 emissions. The Proposal would require registrants to disclose in Form 10-K Scope 3 emissions if material or if the registrant has set a GHG emissions reduction target or goal that includes Scope 3 emissions. Registrants would be required to disclose Scope 3 emissions—as well as Scope 1 and Scope 2 emissions—disaggregated by each constituent greenhouse gas and in the aggregate. This approach differs from the requirements under the GHG Protocol and may be technically infeasible and/or immaterial for some companies or industries.

Adding further complexity, the Proposal would require registrants to calculate GHG emissions, a non-financial measure, based on financial reporting concepts as opposed to the operational control approach that is commonly used and widely accepted. This would result in significant costs and burdens for companies to either change their measurement and reporting system to include GHG emissions, or maintain two diverging sets of GHG emissions data without a corresponding benefit to investors. To the extent this results in companies reporting conflicting estimates to the SEC and to other governmental or regulatory bodies or voluntary frameworks, this would create confusion rather than decision-useful information for investors.

Further, the Proposal would require companies that report Scope 3 emissions to identify the categories of upstream or downstream activities included in the calculation of the Scope 3 emissions and, 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. The Proposal indicates that “if a registrant determines that certain categories of Scope 3 emissions are material, registrants should consider disclosing why other categories are not material.” Registrants may therefore find it necessary to estimate Scope 3 emissions for categories they know not to be “significant” merely to demonstrate that determination is correct. Registrants that have set GHG emissions targets or goals for certain categories of Scope 3 emissions may have done so based on an affirmative evaluation of the “significance” of those categories as compared to the other Scope 3 categories. Requiring such companies to determine whether additional categories are “significant” and thus subject to reporting is duplicative and burdensome and could result in inconsistent approaches even within a sector.

The proposed requirements also represent a further departure from traditional standards of materiality, which will introduce additional variability in reporting. More fundamentally, the Proposal incorrectly assumes that disclosure of “significant” categories of Scope 3 emissions will provide decision-useful information to investors about a company’s climate transition risk exposure and may be material if they represent a large portion of a company’s overall emissions. However, Scope 3 emissions are not necessarily reflective of transition risk and defining materiality by reference to the size of overall emissions (or the size of a particular

category of Scope 3 emissions) is not in line with the existing legal standard for materiality or with how companies identify and manage climate-related transition risk.

In summary, disclosing Scope 3 emissions as proposed will likely be challenging for companies with diverse value chains and the risk of false comparisons can mislead investors. The proposed Scope 3 requirements would necessitate significant estimation and result in data that is neither consistent nor comparable across registrants; are a significant departure from the way companies currently evaluate emissions; would be unlikely to produce reliable, comparable data; and would subject companies to excessive cost and liability without a meaningful safe harbor.

In revising the Proposal, the SEC should consider and address each of these challenges. Further, if Scope 3 emissions disclosure is mandated, the Commission should clarify that only the Scope 3 emissions categories that are material, under existing materiality standards, are required to be disclosed.

iv. The Proposal Would Require an Overwhelming Amount of Disclosure That Is Not Tied to Materiality, Would Not Provide Useful Information for Investors, and Could Result in Disclosure of Sensitive Information and/or Chill Development of Best Practices

Overwhelming new disclosure requirements not tied to materiality

The Proposal would require an overwhelming number of highly detailed, extensive disclosures about various climate-related matters, which would result in excessive information that is burdensome to produce, not comparable from company-to-company, and not decision-useful as it risks overwhelming investors with excessive detail. Certain aspects of the proposed requirements begin with a reference to materiality, but then impose specific information requirements that appear to be required whether material or not.

For example, companies would be required to provide specific information about the location of properties that may be at risk, including details by ZIP code. Requiring ZIP code-level disclosure of properties, processes or operations that could be materially impacted by an identified physical risk is overly onerous (especially for global companies operating in multiple jurisdictions) and could impose physical security risks with little additional benefit or value to investors. This would be very difficult and even impossible in some cases, such as for non-stationary assets (i.e. mobile vehicles). In addition, it could result in potentially hundreds of thousands of reported data points (i.e. individual transmission and distribution emissions sources) in the filing that do not add value for investors. Similarly, the requirement to disclose detailed information on processes for identifying, assessing and managing climate-related risks (e.g., “how the registrant considers shifts in customer or counterparty preferences, technological changes, or changes in market prices in assessing potential transition risks”) also

would add unnecessary detail of potentially proprietary information (as discussed below), and bring inherent uncertainties, ultimately resulting in unreliable and incomparable information.

No other topics of general applicability covered in SEC disclosure requirements come anywhere near this level of detail, and this should not be used to set such a precedent. Similarly, we believe any requirement for disclosure of climate-related scenario analysis, transition plans, targets and goals, and governance, which are discussed further below, should be tied to considerations of materiality.

Overly prescriptive and detailed governance disclosures

The Proposal would also mandate a similar level of prescriptive detail for companies' governance around climate matters, including the individual positions that perform specific functions with respect to climate matters, and how management and its committees are informed about and monitor climate-related risk. The extent of this disclosure far exceeds required governance disclosures about any other topics and is disproportionate to a board's overall responsibilities. Further, the level of detail included in the Proposal is not necessary to understanding companies' climate oversight and could even be misleading, as it risks overstating the importance of one of many relevant risks to a company's operations.

Additionally, we are concerned the proposed disclosures about whether the board has a member with climate expertise would exacerbate the growing problem of disclosure rules driving boards to appoint "single purpose" directors (i.e., a cybersecurity expert and a climate expert), a development that we believe will undermine the ability to form a well-functioning board with members who can effectively oversee the full range of issues companies face. Boards are, by design, deliberative bodies, which are tasked with overseeing numerous traditional and emerging risks, of which climate risk is only one risk driver. While it is important for boards to have a mix of directors with different skills and experiences, those are generally considered broadly—experience with retail operations or international business, for instance, rather than particular technical skills. A board should have the flexibility to determine its own appropriate composition, taking into consideration the size of the board and the diversity, expertise and tenure of board members.

Should the SEC determine to adopt these disclosure requirements as proposed or otherwise, it should provide a safe harbor similar to that provided in the cybersecurity proposal, providing that the relevant board member will not be deemed an expert.

In addition to addressing the above concerns, including by bringing this disclosure requirement in line with other governance-related disclosure requirements, we believe such information should be permitted to be included in the proxy statement, rather than in the Form 10-K, consistent with current disclosures concerning governance matters.

Disclosure of competitively sensitive information

The Proposal would require companies to disclose information that may be competitively sensitive. As noted above, the requirement to disclose detailed information on processes for identifying, assessing and managing climate-related risks would add unnecessary detail of potentially proprietary information, among other concerns. The proposed requirement “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, or to support the resilience of its strategy and business model in light of foreseeable climate-related risks” could require disclosure of proprietary risk modeling and analyses, as well as classified or sensitive information with national security implications. Internal scenario analyses are widely considered a risk management tool. Requiring companies to disclose the details of their climate scenario analyses seems analogous to disclosing details of cybersecurity tabletop exercises and other risk-management assessments that are meant to inform management in the development of proprietary controls and processes, which is not required under current rules or the Commission’s current cybersecurity proposal.

Effective scenario analyses require the use of substantial amounts of competitively sensitive proprietary data relating to a registrant’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. Furthermore, for many registrants and sectors, scenario analysis practices are still in the developmental stage and will take time to mature. In addition, results of company scenario analysis would lack comparability and decision usefulness given both the significant company-specific assumptions underpinning the analysis and use of climate-related data that may be subject to limitations (e.g., completeness, timeliness relative to the reporting period, reliability, etc.). Finally, for some registrants (e.g., banks and insurers), at least some of that information may be “confidential supervisory information” that is legally required to be kept confidential.

The proposed requirements to disclose transition plans raises additional concerns around competitively sensitive information; the nature of processes/operations and the amount of assets (e.g., book value and as a percent of total assets) at facilities located in regions of high or extremely high water stress (a term that can be widely interpreted); and how climate-related risk impacts are considered as part of the registrant’s business strategy, financial planning and capital allocation (current and forward-looking disclosures).

If required, a principles-based discussion of how a company uses climate scenario analysis would be more appropriate. While disclosure of scenarios that are used could be appropriate on a voluntary basis, companies should be able to disclose their use of climate scenario analysis without providing detailed inputs, assumptions, parameters and outputs.

Chilling impact of required disclosures on best practices

Mandatory disclosure in Form 10-K of scenarios, targets and goals and the proposed Scope 3 emissions disclosure practices could have a chilling effect on adopting best practices. We note in this regard that many companies use in-house scenarios rather than those that are publicly available. In-house scenarios typically include extensive proprietary information that a company would not otherwise be required to disclose in Form 10-K. Those that use in-house scenarios may feel compelled to reevaluate their approach in light of the disclosures. Similarly, those companies that are not currently engaged in scenario planning exercises and/or do not have Scope 3 emissions goals may be disincentivized from doing so due to the unduly burdensome requirements outlined in the Proposal.

The Proposal would also require a registrant to disclose extensive information – regardless of materiality – if it has set any climate-related targets or goals. These disclosures include the scope of activities, unit of measurement, baseline, interim targets and data to indicate whether the registrant is making progress on its goals, among other requirements, updated *every fiscal year*. This could deter companies from setting new goals around water, energy, low-carbon products and other climate-related items because of extensive reporting requirements. Thus, as a result of the proposed new requirements, a registrant may decide to forgo or delay setting emissions reductions targets to avoid burdensome, ongoing disclosure requirements – regardless of materiality – where the registrant does not have a team and/or a system in place to meet such requirements, thereby missing or delaying the opportunity to begin actual emissions reduction. Relatedly, the Proposal would effectively punish early adopters by requiring disclosure of all scenarios, targets or goals in extensive detail, diverting company resources away from substantive climate action and toward disclosure obligations.

v. *The Proposal Presents Significant Implementation Challenges*

Disclosures should not be included in Form 10-K and should instead be provided in a separate report on a separate timetable

As noted, the Proposal would require that extensive and detailed climate disclosures be included in annual reports on Form 10-K (and updated quarterly in Form 10-Q). *As we suggested in response to the March 2021 request for public input, such disclosures are more appropriately included in a standalone report submitted on a separate timetable from the annual report on Form 10-K.*

As referenced elsewhere in this letter, it will be infeasible for many companies to collect, confirm and assure the amount and level of detailed information that is proposed to be required in Form 10-Ks under the Proposal, thus resulting in less reliable disclosures and excessive liability risk for companies. For example, as noted above, Scope 1 and Scope 2 emissions information, including required reporting to EPA, is not prepared on a timetable that

aligns with the Form 10-K reporting timetable, and thus would require significant estimation, particularly for fourth quarter information. This is a major concern, both for reporting companies and investors. If companies need to report on modeled fourth quarter data (with attestation) which then needs to be updated later in the year with actual data, companies will experience a high resource burden for preparing this information. More importantly, investors will be left to sift through additional data that will not necessarily contribute to their understanding of how a company manages climate-related risks, opportunities and impacts. Further, internal control over financial reporting for the proposed audited financial statement footnote on climate metrics would be extremely difficult to develop, and the metrics would be costly and burdensome, if not impossible, to prepare and audit on the timeframe that would be required by the Proposal. Additionally, the timing for attestation work for Scope 1 and Scope 2 emissions would put further pressure on an already overly compressed time period.

The proposed new disclosure requirements are highly detailed and extensive, and will result in what is in essence a separate “climate report” within the body of the Form 10-K. If climate information is required to be disclosed in the Form 10-K, at the levels of detail proposed, it would overshadow and dilute other critical company information in the Form 10-K. This will confuse, not clarify, information presented to investors.

Instead, registrants should be allowed to furnish a “climate report” comprising material climate-related information on a separate timetable from the Form 10-K that enables the information to be carefully prepared and reviewed to enhance its reliability. Allowing companies to furnish this information separately from the 10-K would also help address the significant liability concerns discussed elsewhere in this letter.

The proposed attestation requirement would be costly and infeasible on the disclosure timetable proposed

The proposed attestation requirements for Scope 1 and Scope 2 emissions will be excessively costly without corresponding investor benefit and would significantly exacerbate the timing concerns associated with inclusion of the proposed new climate disclosures in Form 10-K. As we saw with Section 404 of the Sarbanes-Oxley Act, the proposed assurance requirements have the potential to increase costs substantially. These added costs must be well understood and measured against any benefit. Further, moving from limited assurance to reasonable assurance could add far greater costs than anticipated, potentially without a commensurate increase in reliability of the information. We therefore urge the SEC to reevaluate its approach in this regard, including its estimate of the potential assurance-related costs to be imposed on companies. While third party attestation is common, we are concerned about the feasibility of obtaining assurance on the proposed timelines required to file on the Form 10-K.

vi. Transition

Given the breadth of information requested by these rules, Business Roundtable recommends delaying implementation of any eventual rule for at least two years to allow companies to gather the required data and prepare for disclosure. In addition to postponing the effective date of the rule, companies should be permitted in the first year the rule applies to them to provide the required disclosures for the latest year presented as opposed to the proposed requirement that the information be provided for all historical periods presented. Companies do not currently prepare historical information that would be comparable to the newly required information, and requiring that information to be produced would substantially increase the already excessive costs without a corresponding benefit to investors.

vii. The Proposal's Cost-Benefit Analysis Is Fundamentally Flawed and Significantly Understates the Ultimate Compliance Costs of the Rules

As a final matter, we note that the Proposal's cost-benefit analysis is fundamentally flawed and significantly understates the ultimate compliance costs of the rules. The climate disclosure rule proposed by the SEC would impose monumental compliance costs on public companies and result in significant direct and indirect economic costs. In its Proposal, the SEC does not offer either quantitative or qualitative assessments of the anticipated costs and benefits associated with the rule, beyond providing data on possible compliance costs and generally describing anticipated benefits to investors.

On the anticipated quantitative compliance costs, the estimates are quite high and likely still do not include much of the actual costs that would be incurred, including with respect to designing and developing systems to collect the requested information, a task for which existing financial reporting systems are not designed to address. In this regard, the SEC acknowledges that the rule likely would more than double the total cost and company employee time associated with preparing the ten major reports that would be amended by the rule. The estimated compliance dollar amounts (\$640,000 per year in the first year and \$530,000 per year in subsequent years), while quite high, are severely underestimated and do not reflect the actual costs companies would incur since they appear to be based on various example disclosures (e.g., voluntary TCFD reports) that are far less extensive and prepared on a different schedule than the many new mandates in the proposed rule. In particular, the proposed Regulation S-X provisions are novel, not reflected in the TCFD disclosure framework, and would require companies to effectively create a new "climate ledger"—with substantial costs that are not anticipated in the cost-benefit analysis. A majority of Business Roundtable companies that have analyzed the potential costs associated with implementing the proposed rule believe they will be orders of magnitude more than what the SEC estimates. Other than the reference to the specific compliance costs of report preparation, the SEC provides no guidance for how to evaluate the likely costs and benefits of its Proposal.

Further, the SEC does not adequately address Congress's statutory directive to assess the effects of the Proposal on efficiency, competition and capital formation. In particular, the SEC does not account for how the significant increase in public company operating costs resulting from the rule will impact these goals. And, significantly, the SEC does not offer any guidance on the potential costs and burdens expected from changes the rule likely will induce in the way U.S. public companies do business.

Presumably, the additional information on climate change risks and opportunities provided pursuant to the Proposal will generate investor pressure for capital reallocation and operating changes. Yet the SEC provides no guidance on the potential impact of this capital reallocation on businesses, job creation or the economy.

The fact that some companies and investors may favor these proposed changes does not obviate the need for the SEC to consider these costs in carrying out its rulemaking responsibilities. And, while we acknowledge that many investors are interested in climate-related information, they are not asking for the level of detail that would be required under the Proposal (e.g., ZIP code disclosures, financial statement line-item disclosures with a 1 percent threshold). It is not reasonable to weigh the costs of disclosure from this rule against the theoretical benefit of "more climate-related disclosure."

CONCLUSION

Business Roundtable supports developing a meaningful, useful framework for mandatory climate-related disclosures. However, as drafted, a number of key provisions in the Proposal are unworkable for most companies, and the Proposal does not meet the SEC's stated goal to provide consistent and comparable information that may affect financial performance. We urge that the SEC publish a revised proposal addressing these concerns for further comment.

The SEC has a critical mandate to protect investors, maintain fair, orderly and efficient markets, and facilitate capital formation. Any proposal to mandate climate disclosures should advance this vitally important mandate and be grounded in SEC's statutory powers and the time-tested materiality standard.

Business Roundtable appreciates the opportunity to provide our input during this process. Because of the breadth of the Proposal, we have not attempted to provide comprehensive comments, but have focused on the areas of highest concern. We would be happy to discuss these comments or any other matters you may find helpful. Please contact Maria Ghazal, Senior Vice President & Counsel of Business Roundtable, at mghazal@brt.org or 202-496-3268.