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

February 8, 2023

Re: The Enhancement and Standardization of Climate-Related Disclosure for Investors
Attention: 87 FR 21334; Docket ID: SEC-2022-06342; File No. S7-10-22

Dear Ms. Countryman,

We are writing on behalf of Public Citizen, Americans for Financial Reform Education Fund, and Sierra Club to supplement the information provided in previous comments we submitted. The purpose of this letter is to highlight a number of recent developments that further strengthen the rationale for the proposed rule.

As explained in our attached summary of developments related to climate-related financial risk, dramatic changes ushered in by the Inflation Reduction Act, the Russian invasion of Ukraine, and global market trends more generally, are accelerating a rapid transformation in the investment landscape. Global investment in the clean energy transition surpassed $1 trillion last year, a new record and a major jump from the year before. Meanwhile demand for new fossil fuel infrastructure is steadily weakening as even key fossil fuel actors have come to terms with the reality that oil and gas price volatility—as experienced in the wake of Russia's invasion of Ukraine—is a dangerous liability. In comparison, clean energy is generally cheaper, healthier, and less easily leveraged as a geopolitical tool.

Meanwhile, climate-risk disclosure capacity and expertise of corporations, accountants, and auditors is growing at a rapid rate as companies prepare for an array of new disclosure obligations. Many of the perceived roadblocks raised by commenters to the proposed rule are falling away as the private sector increasingly recognizes the fundamental dynamics of the transition to a decarbonized economy: stronger climate policy, growing customer and employee demand for climate solutions, technological advances and cost reductions in the clean energy sector. Global standard-setters are converging on a set of norms that will guide industry and investors alike. If the SEC enacts a less rigorous disclosure regime, it may well stand alone behind the many other jurisdictions that will swiftly codify the global baseline standards issued by the International Sustainability Standards Board (ISSB). Consequently, the U.S. capital markets will be less fair, and U.S. investors less protected, for the SEC's failure to modernize with the rest of the world.

The proposed disclosure requirements advance multiple facets of the SEC's mission.In addition to protecting investors from undisclosed and unreliable information about risks to public companies, they also promote efficient markets and capital formation by making available reliable information about *opportunities*. The developments highlighted in this letter represent an unprecedented array of economic opportunities for investors—but these opportunities can only be efficiently seized if investors have the standardized, reliable disclosures that are described in the proposed rule.

In particular, the SEC should not retreat on its proposed Scope 3 emissions disclosure requirements, which remain a critical indicator of a company's exposure to transition risk, its opportunities to capture financial incentives, and its management of those risks and opportunities over time. Further, the SEC should retain the amendments to Regulation S-X requiring disclosure of critical climate-related financial inputs, estimates, and assumptions underlying the consolidated financial statements; expenditure metrics; and significant climate-related impacts on the financial statements. Investors have a right to reliable and comparable disclosures about public companies' readiness to seize the opportunities of a low-carbon future.

Sincerely,

Clara Vondrich
Public Citizen

Alex Martin
Americans for Financial Reform Education Fund

Ben Cushing, Jessye Waxman & John Kostyack
Sierra Club

Recent Developments in Climate-related Financial Risk

Missed opportunities are risky business too.

The investor protection mandate in the Securities Act and Securities Exchange Act charges the SEC with protecting investors from all deception—both concealment of risk and also exaggeration of opportunities. The docket of enforcement and compliance actions shows that both are common. It follows that the SEC has a duty to help investors identify real opportunities and judge whether companies are capable of leveraging them and are sincere in their stated pursuit.

The Commission has published numerous alerts and bulletins that seek to educate investors about how to spot a scam or bogus investment opportunity. Greenwashing and concealment by companies with significant exposure to climate risk, rampant in today's capital markets, is deservedly earning greater attention. When investors are duped by greenwashing, they are not only exposed to financial loss but denied access to opportunities to participate in businesses that are well-positioned to succeed due to carefully developed transition plans. Similarly, businesses with credible transition plans are unfairly denied access to investment capital when other businesses without such plans are able to conceal their relative unpreparedness. Thus, by increasing transparency on material financial risks, the SEC furthers its mission to support capital formation.

The Inflation Reduction Act's incentives for clean energy technology and infrastructure are accelerating already rapid changes to the investment landscape. A report from the law firm White & Case found that 42% of executives in the traditional energy sector now say they see capital investment in the energy transition as a high priority. That percentage has tripled from just two years ago. Nevertheless, despite the lip service paid to transition planning, most integrated oil companies (to note just one example) still lack credible and transparent business plans for decarbonization and are failing to substantially tilt their capital expenditures toward clean energy. Without the kind of robust climate-disclosure standards proposed by the SEC, investors will be unable to distinguish between the companies merely talking about the clean energy transition versus those that are leading the way.

Market transitions away from fossil-heavy activities and toward low- and zero-emitting practices are not just proceeding apace, but are rapidly accelerating. The Inflation Reduction Act has already fueled a boom in the U.S. solar industry, with solar companies expanding their operations and making new investments in domestic manufacturing facilities. A September 2022 report from the Solar Energy Industries Association and Wood Mackenzie says that continued massive growth is all but guaranteed thanks to the long-term certainty provided by the new law. According to the report,the solar market will roughly triple over the next five years, growing 40% more than prior forecasts. In the UK last December, 57% of new car registrations were battery electric vehicles or hybrids. NGO Carbon Tracker predicts 1 in 3 car sales in the UK will be all-electric by the end of this year. Even oil major BP anticipates that the pace at which renewable energy captures global energy market share will be quicker than that of any previous fuel in history.

These dramatic changes are accelerating transition risks in real time. Scope 3 emissions are often the most important quantitative indicator of a company's exposure to these risks; for many companies and sectors, a GHG inventory without Scope 3 emissions would be misleading to investors. The rapid expansion of renewable energy, energy efficiency, and building and transportation electrification is widely seen as threatening the expansion plans of fossil fuel-based technology and power, and investors need greater transparency regarding the likely pace of that displacement. A failure by a fossil gas producer, for example, to fully disclose its Scope 3 emissions and plans for reducing them leaves investors with a very misleading snapshot of the company's transition risks, with potentially devastating consequences for their portfolios. When reported over time in a standardized and comparable format, Scope 3 emissions also serve as a good indicator of a company's fidelity to its sustainability commitments and its overall credibility and reputational risk.

Bloomberg and other data providers are expanding their Scope 3 offerings in response to investor demand.

Bloomberg recently expanded its Scope 3 dataset by about 40,000 companies, bringing their total to 100,000. This expansion of a leading data provider's offerings is yet another signal that investors and other market participants are seeking more reliable and comprehensive carbon data. A Bloomberg spokesperson noted: "Greater precision in Scope 1, 2 and 3 carbon emissions data will enable asset managers and banks to measure the extent of climate change risk within their investment and lending portfolios, and across their operations as a whole." Measurement and management of these "financed emissions" is a critical part of maintaining orderly and efficient markets in a carbon-constrained world.

Of special note, Bloomberg has been able to develop Scope 3 estimates for the most carbon-intensive industries (Oil and Gas, Metals and Mining) using a combination of historical data and machine learning. This is a crucial rebuttal to arguments that calculating Scope 3 emissions is fraught with complexity, saddling disclosing companies with prohibitive costs. Moreover, Bloomberg's Scope 3 protocols recognize that emissions cannot always be calculated with precision, and that estimates are acceptable: To add clarity, Bloomberg assigns Scope 3 estimates a PCAF reliability score to help investors assess the level of confidence with the data. Estimates, with appropriate caveats, are commonplace in the finance industry, and can often be formulated using public data and information already gathered from value chain participants as part of ordinary business.

For more information, please refer to this white paper on Bloomberg's machine learning greenhouse gas estimate model. In addition, one can request a Bloomberg terminal demo to explore the GHG and transition plan data and tools available.

Global standard-setters, the European Union, and some U.S. states are including Scope 3 requirements to protect investors and markets.

At the end of January 2023, California legislators proposed a package of three bills aimed at protecting investors from climate-related financial risk. One would require any corporation in California making at least $1 billion in annual revenue to disclose their greenhouse gas emissions, including Scope 3 emissions. The California GHG proposal *does not* include a materiality limitation for Scope 3. Another bill would require corporations that earn more than $500 million in annual revenue to prepare climate-related financial risk reports. These California bills demonstrate the growing momentum for mandatory climate disclosure. (The third bill requires state pension funds to divest from fossil fuels.)

In December 2022, the International Sustainability Standards Board (ISSB) announced that its climate-related disclosure standard will include Scope 3 disclosure when material. The meeting notes, decisions, and recording can be found here. ISSB's decision was made after consultation with many large investors, who told the ISSB that they "**cannot fully understand a company's transition risk without information about its absolute gross Scope 1, 2, and 3 emissions**."

Set for release in June 2023, the ISSB framework is expected to become the baseline climate risk disclosure framework for jurisdictions worldwide. The UK has already signaled that it will adopt the standards as part of future mandatory sustainability reporting requirements, and global financial regulators—including those from the UK, Europe, Japan, China and the U.S.—have been collaborating to ensure the standards are compatible to the greatest degree possible with new financial regulations in their home markets.

In December last year, the ISSB held roundtables with representatives from nations in the Global South to ensure the disclosure standards can be adopted and applied effectively around the world. Representatives participated from Brazil, Chile, Egypt, Indonesia, Kazakhstan, Kenya, Nigeria, Mexico, Pakistan, South Africa, Sri Lanka, Uzbekistan, Zimbabwe, Thailand and Papua New Guinea.

The similarities between the ISSB framework and the SEC's proposed rule are manifold: Both embrace a materiality threshold specifically for Scope 3 disclosures.[1] The ISSB framework further permits the use of "reasonable and supportable information that is available without undue cost or effort and incorporates the use of estimation," a further counterpoint to claims that Scope 3 is unduly burdensome. Moreover, once ISSB is adopted in major jurisdictions—many of which are expected to make them explicit requirements rather than allowing issuers to determine materiality for each item—cross-listed companies will need to disclose their emissions regardless of the SEC's rule, thereby limiting any purported compliance burden.

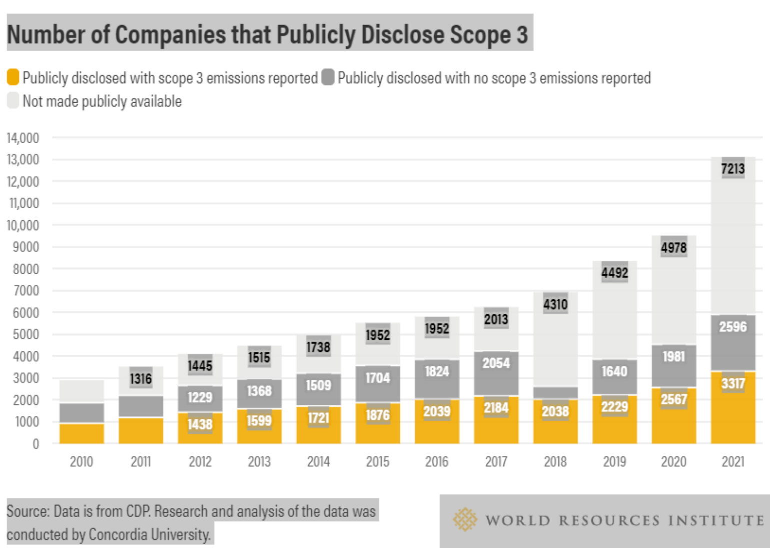
[1] As we explain in our June 2022 comments to the Commission, considering the extensive evidence that Scope 3 emissions are material to investors, we do not believe that issuers should be excused from Scope 3 emissions disclosure requirements based on their own self-interested determinations that they are immaterial to investors.

Furthermore, without a Scope 3 requirement, U.S. investors will be exposed to additional risk not borne by investors in ISSB jurisdictions.

The European Union is also now poised to adopt broad climate-related risk, ESG and sustainability disclosure requirements that would apply to both public and private companies in Europe that meet certain size thresholds. Under the revised Corporate Sustainability Reporting Directive (CSRD), companies will be required to disclose all GHG emissions, including Scope 3. Environmental topics subject to disclosure will not be limited to climate, but also water and marine resources, circular economy, pollution, and biodiversity. Companies will have to consider both the material ESG risks facing their own businesses and the material risks posed by their operations to society and the environment (the so-called “double-materiality” standard). In addition, companies will have to provide transition plans consistent with limiting global warming to 1.5°C, and obtain third-party assurance over their disclosures. Judged in light of the European standards, the SEC’s proposed rule is comparatively straightforward.

Thousands of global companies are already reporting Scope 3.

It bears repeating that thousands of companies across all major industries are already measuring and reporting on their Scope 3 emissions. As the chart from the World Resources Institute below makes clear, the trendline is accelerating year on year. The need for standardized, comparable, and reliable reporting is thus urgent.



Moreover, a new Deloitte analysis of S&P 500 amended risk factor disclosures found that the number of new stand-alone climate risk factors soared this past reporting season. Approximately one-third of 439 companies studied added at least one new stand-alone climate risk factor. Nearly 50% of companies described both transition and physical risks, underscoring the need for standardized, reliable disclosures to help investors navigate this new territory.

Global accounting and auditing firms are ramping up expertise to deal with Scope 3.

The oft-repeated challenge that the SEC's rule will prove too costly to implement—requiring a new cottage-industry of climate accounting experts and auditors—is a moot point. This field already exists and is growing. As noted in the last section, thousands of companies have already developed capacity that allows them to publicly disclose Scope 3 emissions.

Furthermore, leading firms like Deloitte and PwC have issued a wealth of client guidance to support Scope 3 disclosures. During PwC's Q4 2022 quarterly accounting webcast, Commissioner Crenshaw emphasized that investors have been asking for comparable information on climate-risk for over a decade, and that the inclusion of climate disclosures in the audited financial statements, in particular, is key to achieving that. A comment to the proposed rule by a coalition of senators, including Senators Jack Reed and Elizabeth Warren, made exactly this point on behalf of their millions of constituents.

Pressure is also increasing on the U.S. audit regulator, PCAOB, to review and revise its attestation standards so that they are fit to assess the validity and credibility of climate disclosures. PCAOB has responded by issuing a request for information and comment on the application and use of the PCAOB's interim attestation standards. Civil society groups have strongly urged the PCAOB to update its attestation standards to cover greenhouse gas attestation engagements due to the growing voluntary use of such engagements, as well as the SEC's proposed rule. More than ever, investors and issuers understand that climate risk is financial risk, and all signs point to the need to include climate-related information in financial statements and audits.

The proposed rule does not run afoul of the major questions doctrine.

The comment period for the climate disclosure rule closed shortly before the Supreme Court's most recent decision in *West Virginia v. EPA*. As a result, the myriad legal scholars who submitted comments supporting the SEC's legal authority to promulgate the rule did not have an opportunity to address the case's potential impact on their analyses. Since then, however, two additional comments have been posted to the record, the first from prominent securities law experts, and the second from attorneys at the Institute for Policy Integrity. Both groups independently analyzed the proposed rule under *West Virginia v. EPA*, and each concluded that the rule is on solid legal footing.

There is no reasonable debate about the SEC's authority to promulgate Scope 3 requirements. That does not mean, of course, that the SEC's rule will not be challenged. But the likelihood of a legal challenge should not drive the Commission's decisionmaking. Furthermore, recently the SEC has been able to obtain enhanced climate-related risk disclosures from a number of U.S. companies under existing authority, a fact that legal experts say is a powerful rebuttal to claims that the SEC is overstepping its authority with the new rule. This also reveals that many issuers recognize that climate risk *is* material, and that they should have been disclosing it all along in response to the SEC's 2010 guidance.

The rule will limit and focus litigation by creating clear standards.

Opponents suggest that the disclosure rule will sow confusion in the marketplace as companies struggle to parse its dictates, and they claim it will unleash a wave of litigation. However, litigation risk has already left the station, and the rule is needed now more than ever to provide clarity.

For instance, recent survey data from law firm Norton Rose Fulbright reveal that in-house counsel at hundreds of global companies are already bracing for shareholder litigation in no small part due to the *absence* of clear disclosure standards and metrics: “Across industries, our clients are feeling pressure from customers, shareholders and regulators, among others, to increase their disclosures of their ESG goals and performance. If these disclosures are perceived as false, misleading or insufficient, litigation may ensue,” said a spokesperson.The report makes clear that it is the combination of growing stakeholder scrutiny and unclear standards that is driving anxiety.

Clear standards help alleviate uncertainty and confusion about regulatory requirements or other duties that often give rise to litigation. By setting clear parameters for disclosure obligations, the proposal allows companies and investors to speak a common language. While some amount of litigation is coming no matter what, the Rule will serve to cabin legal challenges and reduce the number of claims brought.

Conclusion

The SEC should fulfill its mandates to protect investors, maintain fair, orderly and efficient markets, and facilitate capital formation by requiring reliable and comparable disclosures of transition risk. Recent developments discussed in this letter demonstrate that these disclosures are needed both to protect investors from hidden risks and to enable them to seize opportunities, using standardized data highlighting which public companies have meaningful plans to build climate resilience and adapt to the changing economy, and which do not.