MEMO# 34086

March 25, 2022

SEC Proposal Requiring Public Companies to Provide Enhanced Climate-Related Disclosure

[34086]

March 24, 2022

TO: ICI Members
Investment Company Directors
ICI Global Members SUBJECTS: Audit and Attest
Directors Chapter
Disclosure
ESG
Fund Accounting & Financial Reporting RE: SEC Proposal Requiring Public Companies to Provide Enhanced Climate-Related Disclosure

The Commission voted 3-1 earlier this week in favor of issuing for comment a proposal that would enhance and standardize climate-related disclosure for public companies (including asset managers which are public companies). The disclosure would be required to appear in company registration statements and annual reports.[1] The proposed requirements would not apply to registered investment companies. They would apply to business development companies.

Chair Gensler, Commissioner Lee, and Commissioner Crenshaw supported issuing the proposal. Commissioner Peirce dissented.[2] The 506 page proposal creates an extensive climate disclosure reporting regime for public companies and asks for feedback on more than 200 questions. Comments will be due on the proposal 30 days after publication in the Federal Register or 60 days after issuance (May 20, 2022), whichever period is longer.

The proposal is summarized below[3] and references, where applicable, comments that ICI provided to the SEC in June 2021 responding to then Acting Chair Allison Herren Lee's Request for Information on Climate Change Disclosures.[4]

The proposal would amend Regulation S-K to require a registrant to disclose certain climate-related information in a separate, appropriately captioned section of its registration statement or annual report.[5] The disclosure would be required to include information about the registrant's climate-related risks that are reasonably likely to have material impacts on its business or consolidated financial statements, and GHG emissions metrics.

The disclosure framework is modeled on (but is not identical to) the TCFD's recommendations and draws upon the GHG Protocol. Registrants would be required to electronically tag both narrative and quantitative climate-related disclosures in Inline XBRL and to file the climate related disclosures.[6]

TCFD-Based Disclosure Framework (pages 49-53)

The Proposal would require registrants to provide disclosure based on, but not identical to, the TCFD framework.[7] The Release states that similar to the TCFD framework, the proposed climate-related provisions under Regulation S-K would require disclosure of a registrant's:

- governance of climate-related risks (i.e., physical and transition risks);[8]
- any material climate-related impacts on its strategy, business model, and outlook;
- climate related risk management;
- GHG emissions metrics; and
- any climate-related targets and goals.

The Commission explains that it has proposed including a registrant's value chain within the definition of climate-related risks to capture the full extent of a registrant's potential exposure to climate related risks, which can extend beyond its own operations to those of its suppliers, distributors, and others engaged in upstream or downstream activities.[9]

A registrant would be permitted, but not required, to disclose information concerning climate-related opportunities.

Scopes 1 and 2 GHG Emissions Disclosure (pages 224-276)

The proposed rules would require Scopes 1 and 2 GHG emissions metrics for the most recently completed fiscal year,[10] separately disclosed, expressed:

- Both by disaggregated constituent greenhouse gases (i.e., carbon dioxide, methane, nitrous oxide, nitrogen trifluoride, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride) and in the aggregate in terms of CO_2e, and
- In absolute and intensity terms (i.e., metrics tons of CO_2e per unit of total revenue and per unit of production).[11]

This disclosure would be required regardless of its materiality.[12] The proposed rules would require an accelerated filer or a large accelerated filer to include, in the relevant filing, an attestation report covering, at a minimum, the disclosure of its Scope 1 and Scope 2 emissions. Both accelerated filers and large accelerated filers would have time to transition to the minimum attestation requirements (i.e., one fiscal year to transition to providing limited assurance and two additional fiscal years to transition to providing reasonable assurance).[13] The proposed rules would provide minimum attestation report requirements, minimum standards for acceptable attestation frameworks, and would require an attestation service provider to meet certain minimum qualifications. The proposed rules do not specify what type of entity could serve as an attestation service provider but makes clear that it does not have to be a registered public accounting firm.

The proposal does not specify an attestation standard to be applied by an attestation service provider. Instead, any attestation standard must be established by a body or group that has followed due process procedures. This approach is similar to the requirements for determining a suitable, recognized control framework for use in management's evaluation of ICFR. The proposal indicates that the attestation standards established by the PCAOB, the AICPA, and the IAASB would meet the due process requirement.

An attestation service provider must be expert in GHG emissions by virtue of having significant experience in measuring, analyzing, reporting, or attesting to GHG emissions. Significant experience means having sufficient competence and capabilities necessary to perform engagements in accordance with professional standards and applicable legal and regulatory requirements. Attestation service providers must be independent with respect to the registrant and any of its affiliates, for whom it is providing the attestation report, during the attestation and professional engagement period.

Because a variety of attestation service providers may meet these requirements, the proposal requires the registrant to disclose information about the attestation service provider intended to inform investors about the provider's qualifications. Specifically the registrant would be required to disclose: i) whether the attestation provider has a license from any licensing or accreditation body to provide assurance and if so whether the provider is a member in good standing of the licensing or accreditation body; ii) whether the GHG emissions attestation engagement is subject to any oversight or inspection program and if so which program; and iii) whether the attestation provider is subject to record-keeping requirements with respect to the work performed for the GHG attestation engagement and if so the duration of those requirements.

Scope 3 Reporting (pages 217-224)

The proposal would require a registrant to disclose information about:

- Scope 3 GHG emissions in absolute and intensity terms, if material, or if the registrant has set a GHG emissions reduction target or goal that includes its Scope 3 emissions.[14]

The Commission explains that Scope 3 emissions disclosure could help convey to investors the potential financial risks facing a company related to any transition to a lower carbon economy.[15] With Scope 3 information disclosed, investors would be able to assess, in conjunction with reported financial information, how GHG emissions impact the registrant's operations as well as its overall business strategy so that they can make more informed investment or voting decisions. But at the same time, according to the Release, "the objective of this disclosure is not to drive targets, goals, plans, or conduct, but to provide investors with the tools to assess the implications of any targets, goals, or plans on the registrant in making investment or voting decisions."[16]

The Release states that disclosure of Scope 3 emissions also could highlight instances where a registrant attempts to reduce its total Scopes 1 and 2 emissions by outsourcing carbon intensive activities. Scope 3 emissions reporting could provide greater transparency and "help preclude any efforts by registrants to obscure for investors the full magnitude of the climate-related risks associated with their GHG emissions." If required to disclose Scope 3 emissions, a registrant would be required to identify the categories of upstream and downstream activities that have been included in the calculation of its Scope 3 emissions.[17]

The proposed rules would provide a safe harbor from liability from Scope 3 emissions disclosure[18] and an exemption from the Scope 3 emissions disclosure requirement for smaller reporting companies. The proposed rules would include a phase-in period for all registrants, with the compliance date dependent on the registrant's filer status, and an additional phase-in period for Scope 3 emissions disclosure. The Scope 3 emissions disclosures would not be subject to the attestation requirements.

Scopes 1, 2 and 3 GHG Emissions Calculation Methodology (pages 193-216)

A registrant must describe the methodology, significant inputs, and significant assumptions used to calculate GHG emissions. The description must include the registrant's organizational boundaries, calculation approach and any calculation tools used. The organizational boundary and determination of whether a registrant owns or controls a GHG emissions source must be consistent with, and based upon, the same set of accounting principles used to prepare the financial statements. The required GHG emissions disclosure must exclude the impact of any purchased or generated offsets.

A registrant may use reasonable estimates when disclosing its GHG emissions as long as it also describes the assumptions underlying, and its reasons for using, the estimates. The Proposal would permit a registrant, if actual reported data is not reasonably available, to use a reasonable estimate of its GHG emissions for its fourth fiscal quarter, together with actual, determined GHG emissions data for the first three fiscal quarters, as long as the registrant promptly discloses in a subsequent filing any material difference between the estimate used and the actual, determined GHG emissions data for the fourth fiscal quarter. In addition to the use of reasonable estimates, a registrant may present its estimated Scope 3 emissions in terms of a range as long as it discloses its reasons for using the range and the underlying assumptions.

Materiality (pages 170-176)

The Release discusses the concept of the materiality of information with reference to relevant Supreme Court decisions. It also discusses the concept of materiality with reference to the information's decision usefulness to investors and its dynamic nature."[19] In addition, the Release states that:

[w]hen assessing the materiality of Scope 3 emissions, registrants should consider whether Scope 3 emissions make up a relatively significant portion of their overall GHG emissions. While we are not proposing a quantitative threshold for determining materiality, we note that some companies rely on, or support reliance on, a quantitative threshold such as 40 percent when assessing the materiality of Scope 3 emissions. However, even when Scope 3 emissions do not represent a relatively significant portion of overall GHG emissions, a quantitative analysis alone would not suffice for purposes of determining whether Scope 3 emissions are material. Consistent with the concept of materiality in the securities laws, this determination would ultimately need to take into account the total mix of information available to investors, including an assessment of qualitative factors. Accordingly, Scope 3 emissions may make up a relatively small portion of a registrant's overall GHG emissions but still be material where Scope 3 represents a significant risk, is subject to significant regulatory focus, or "if there is a substantial likelihood that a reasonable [investor] would consider it important."[20]

If a registrant determines that its Scope 3 emissions are not material, and therefore not subject to disclosure, it may be useful to investors to understand the basis for that determination. Further, if a registrant determines that certain categories of Scope 3 emissions are material, registrants should consider disclosing why other categories are not material. If, however, Scope 3 emissions are material, then understanding the extent of a registrant's exposure to Scope 3 emissions, and the choices it makes regarding them, would be important for investors when making investment or voting decisions.[21]

Forward Looking Disclosure (pages 70-71)

The Release points out that to the extent that the proposed climate-related disclosures constitute forward-looking statements, the forward-looking statement safe harbors pursuant to the Private Securities Litigation Reform Act ("PSLRA"). It further points out that there are important limitations to the PSLRA safe harbor, including an exclusion for forward looking statements in registration statements for initial public offerings. In addition, the PSLRA does not limit the Commission's ability to bring enforcement actions.[22]

Carbon Offsets or Renewable Energy Credits (page 82)

The proposal would require a registrant that purchases offsets or renewable energy credits, or RECs, to meet its goals as it makes the transition to lower carbon products would need to disclose this additional set of short and long-term costs and risks (e.g., increased demand may increase their cost over time).

Conditional Disclosures: Internal Carbon Price, Scenario Analysis (pages 83-97)

The Proposal would require registrants that use internal carbon pricing when assessing climate-related factors to disclose that use.[23] Because a robust carbon market does not exist, the Proposal does not mandate that registrants use internal carbon pricing and does not propose a specific methodology for setting an internal carbon price. Similarly, registrants that use scenario analysis would be required to disclose the scenarios considered (e.g., an increase in temperature of no greater than 3 º, 2 º, or 1.5 ºC above pre- industrial levels), including parameters, assumptions, and analytical choices, and the projected principal financial impacts on the registrant's business strategy under each scenario.

Governance (pages 97-104)

The proposed rules would require a registrant to disclose a number of board governance items, including:

- identifying any board members or board committees responsible for the oversight of climate-related risks;
- whether any member of a registrant's board of directors has expertise in climate-related risks, with disclosure required in sufficient detail to fully describe the nature of the expertise;
- a description of the processes and frequency by which the board or board committee discusses climate-related risks;
- whether and how the board or board committee considers climate-related risks as part of its business strategy, risk management, and financial oversight; and
- whether and how the board sets climate-related targets or goals and how it oversees progress against those targets or goals, including the establishment of any interim targets or goals.[24]

Risk Management Disclosure (pages 104-107)

The Proposal would require registrants to disclose their processes for identifying, assessing, and managing climate-related risk. It also would require any registrant who has adopted a transition plan to describe its plan, including the relevant metrics and targets used to identify and manage physical and transition risks and to update its disclosure about its transition plan each fiscal year by describing the actions taken during the year to achieve the plan's targets or goals.

Financial Statement Metrics (pages 115-149)

The proposal would amend Regulation S-X to require certain climate-related financial statement metrics and related disclosure to be included in a note to a registrant's audited financial statements. The proposed financial statement metrics would consist of disaggregated climate-related impacts on existing financial statement line items.[25] As part of the registrant's financial statements, the financial statement metrics would be subject to audit by an independent registered public accounting firm, and come within the scope of the registrant's internal control over financial reporting ("ICFR"). The proposal notes that requiring the climate-related information to be included in the financial statements should enhance its reliability.

The proposed climate-related financial statement metrics to be included in a note to the registrant's audited financial statements include:

- Financial impacts of severe weather events and other natural conditions (e.g., flooding, drought, wildfires, sea level rise) on any relevant line item in the registrant's consolidated financial statements;
- Financial impacts related to transition activities including efforts to reduce GHG emissions or otherwise mitigate exposure to transition risks on any relevant line items in the consolidated financial statements;
- Expenditure to mitigate risks of severe weather events and other natural conditions including the aggregate amount of expenditure expensed and the aggregate amount of capitalized costs incurred;
- Expenditure related to transition activities including the aggregate amount of expenditure expensed and the aggregate amount of capitalized costs incurred to reduce GHG emissions or otherwise mitigate exposure to transition risk;
- Financial estimates and assumptions impacted by severe weather events and other natural conditions. If severe weather events impacted the estimates and assumptions used to prepare the financial statements, the registrant must provide a qualitative description of how the estimates and assumptions were impacted; and
- Financial estimates and assumptions impacted by transition activities. If the transition to a lower carbon economy or any climate-related targets disclosed by the registrant impacted the estimates and assumptions used to prepare the financial statements, the registrant must provide a qualitative description of how the estimates and assumptions were impacted.

The financial statement line item impact disclosures required by items (a) and (b) above need not be provided if they amount to less than one percent of the total line item for the relevant fiscal year.[26] Similarly, the expenditure disclosures required by items (c) and (d) above are not required if they amount to less than one percent of the total expenditure expensed or capitalized costs incurred.

Targets and Goals Disclosure (pages 276-285)

The Proposal would require any registrant that has set any climate-related targets or goals to describe:

- The scope of activities and emissions included in the target;
- The unit of measurement, including whether the target is absolute or intensity based;
- The defined time horizon by which the target is intended to be achieved, and whether the time horizon is consistent with one or more goals established by a climate-related treaty, law, regulation, policy, or organization;
- The defined baseline time period and baseline emissions against which progress will

be tracked with a consistent base year set for multiple targets;
- Any interim targets set by the registrant; and
- How the registrant intends to meet its climate-related targets or goals.

The Commission also points out that:

[s]ome companies might establish climate-related goals or targets without yet knowing how they will achieve those goals. They might plan to develop their strategies over time, particularly as new technologies become available that might facilitate their achievement of their goals. The fact that a company has set a goal or target does not mean that it has a specific plan for how it will achieve those goals. What is important is that investors be informed of a registrant's plans and progress wherever it is in the process of developing and implementing its plan.[27]

Scope of the Proposal and Questions Regarding Mutual Recognition (pages 285-293)

The proposed climate-related disclosure rules would apply to a registrant with Exchange Act reporting obligations pursuant to Section 13(a) or Section 15(d) and companies filing a Securities Act or Exchange Act registration statement, including business development companies and asset managers that are public companies. The proposed rules would not apply to registered investment companies or asset-backed issuers.

The Commission requests comment on whether it should adopt, as an alternate reporting provision, a mutual recognition system so that a registrant dual-listed in the US and the other jurisdiction could use the Commission required disclosure to fulfill the foreign jurisdiction's climate-related disclosure rules.

The Release acknowledges the recent creation of the International Sustainability Standards Board (ISSB) and asks if any alternative reporting provision should be structured to encompass reports made pursuant to criteria developed by the ISSB.

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Appendix: Excerpts from Commissioner Statements

Each of the Commissioners issued a statement in connection with the proposal, and they are summarized below.

Chair Gensler's statement provided an overview of the proposal.[28] He noted that the Commission benefited from the 600 unique comment letters submitted in response to then-Acting Chair Allison Herren Lee's statement on climate disclosures in March 2021 and encouraged issuers and investors to weigh in on each of the proposed disclosures. A registrant would be required to determine the impacts of the severe weather events, other natural conditions, transition activities, and identified climate-related risks described above on each consolidated financial statement line item. 349 Within each category (i.e., climate-related events or transition activities), impacts

Commissioner Peirce, who voted against the proposal, explained the bases for her opposition in a lengthy statement.[29] She stated that the proposal turns the disclosure regime on its head, asserting that current SEC disclosure mandates are intended to provide investors with an accurate picture of the company's present and prospective performance through managers' own eyes. She stated that the proposal, by contrast, tells corporate managers how regulators, doing the bidding of an array of non-investor stakeholders, expect them to run their companies. She asserted:

- Existing rules already cover material climate risks. The existing rules require companies to disclose material risks regardless of the source or cause of the risk and climate-related information could be responsive to a number of existing disclosure requirements. The Commission proposes to require companies to pull into Commission filings non-investor-oriented information that is either immaterial or keyed to a distended notion of materiality that seems to turn on an embellished guess at how the company affects the environment.
- The proposed rule dispenses with materiality in some places and distorts it in others. The Commission proposes to mandate a set of climate disclosures that will be mandatory for all companies without regard for materiality. Even where materiality thresholds exist, the proposal tweaks materiality and seems to presume materiality for Scope 3 emissions.
- The proposal will not lead to comparable, consistent, and reliable disclosures. The proposal does not just demand information about the company making the disclosures; it also directs companies to speculate about the habits of their suppliers, customers, and employees; changing climate policies, regulations, and legislation; technological innovations and adaptations; and changing weather patterns. The release mistakenly assumes that quantification can generate clarity even when the required data are, in large part, highly unreliable. Requiring companies to put these faulty quantitative analyses in an official filing will further enhance their apparent reliability, while in fact leaving investors worse off, as Commission-mandated disclosures will lull them into thinking that they understand companies' emissions better than they actually do.
- The Commission lacks authority to propose this rule. This proposal steps outside the SEC's statutory limits by using the disclosure framework to achieve objectives that are not the SEC's to pursue and by pursuing those objectives by means of disclosure mandates that may not comport with First Amendment limitations on compelled speech. The SEC's disclosure mandates are at their strongest when there is a clear and indisputable connection between the factual information to be disclosed and the SEC's three-part mission. Attempting to establish that essential connection, the Commission points to "significant investor demand for information about how climate conditions may impact their investments." Many calls for enhanced climate disclosure are motivated not by an interest in financial returns from an investment in a particular company, but by deep concerns about the climate or, sometimes, superficial concerns expressed to garner goodwill. The fact that retail and institutional investors and asset managers have myriad motivations when making investing decisions and by extension therefore might want different categories of information necessarily means that the SEC cannot adopt a disclosure regime that provides all information desired by all investors and asset managers.
- The Commission underestimates the costs of the proposal. First, although the proposal is based in part on popular voluntary frameworks, those frameworks are neither universally used nor precisely followed. Second, as hard as it will be for a company to be confident in its own climate-related information, a company may not even be able to get the information it needs to calculate Scope 3 emissions. Third, the

assurance that companies do have to get likely will be expensive.
- The proposed rule would hurt investors, the economy, and this agency. It is important to remember that noble intentions, once baked into complex regulatory plans, often have ignoble results. This risk is considerably heightened when the regulatory complexity is designed to push capital allocation toward politically and socially favored ends, and when the regulators designing the framework have no expertise in capital allocation, political and social insight, or the science used to justify these favored ends. This proposal, developed under these circumstances, will hurt investors, the economy, and this agency.

Commissioner Peirce nevertheless stated that comments on the proposal will inform her thinking about whether the SEC should adopt climate disclosure rules and, if so, what they should look like. She stated that she is particularly interested in hearing if there are types of universally material climate information that are not being disclosed under our existing rules.

Commissioner Lee expressed support for the proposal in her statement[30] and stated that she is especially interested to hear from commenters in the following areas:

- Reliability of GHG Emissions Disclosures
  - A company's internal controls. Would GHG emissions be better placed within Reg S-X and subject to the rigors of internal control over financial reporting (ICFR)? Alternatively, should we leave emissions disclosure in Reg S-K as proposed but add a new requirement to establish ICFR-like internal controls for GHG wherever they reside?
  - Third-party verification. Will the fact that the required assurance may be provided by third-party verifiers that are not PCAOB-registered audit firms help to improve competition in this space and thus create better outcomes? Will this difference substantially affect the quality of, or confidence in, the verification?
  - Reasonable vs. limited assurance. She expressed hope that commenters will weigh in on whether to keep the proposal's requirement to subject GHG Scopes 1 and 2 to reasonable assurance attestation after an interim period of limited assurance.
- Scope 3 Emissions
  - Specificity. Does the release contain sufficient specificity regarding how companies should undertake this analysis? Also, should companies be required to provide the basis for any determination that their Scope 3 emissions are not material in order for investors assess whether they agree with the determination, especially in light of Supreme Court precedent stating that doubts about materiality should be resolved in favor of disclosure?
  - Assurance Carve-out. Given the overall significance of such data, would it be more prudent to phase in an assurance requirement over time for Scope 3? Would a phase-in period be consistent with an expectation that Scope 3 disclosures are likely to mature over time with across-the-board disclosure of Scopes 1 and 2 emissions?
  - Safe Harbor. Should the safe harbor also or instead be conditioned upon the use of specific methodologies such as the Partnership for Carbon Accounting Financials (PCAF) Standard if the registrant is a financial institution, or the GHG Protocol Scope 3 Accounting and Reporting Standard for other types of registrants?

Commissioner Crenshaw expressed support for the proposal in her statement[31] and highlighted the following three elements that illustrate the proposal's thorough and nuanced nature:

- The separation of disclosures relating to the impact of physical risks, transition risks, and certain other company-identified climate-related risks;
- The limited assurance by an independent party of Scopes 1 and 2 GHG emissions one fiscal year after compliance with the rule, followed by a more thorough reasonable assurance after two additional fiscal years; and
- Disclosure of Scope 3 emissions by companies that include Scope 3 emissions in a GHG reduction target or goal.

She encouraged commenters to review the parts of the release relating to assurance with added attention and to engage the Commission with their views. She stated that she looks forward to feedback on the disclosures and whether they will help keep pace with the market.

endnotes

[1] The proposal, Enhancement and Standardization of Climate-Related Disclosures (Rel. No. 33-11042) (March, 21, 2022) is available at https://www.sec.gov/rules/proposed/2022/33-11042.pdf

[2] The Commissioner's statements are available at https://www.sec.gov/news/speeches-statements. A brief summary of the statements and the questions on which the Commissioners are seeking comment is attached as an appendix.

[3] The Commission's fact sheet summarizing the proposal is available at https://www.sec.gov/files/33-11042-fact-sheet.pdf

[4] The Request is available at https://www.sec.gov/news/public-statement/lee-climate-change-disclosures and the letter is available at https://www.ici.org/system/files/2021-06/21_ltr_rfi.pdf

[5] Alternatively, the company could incorporate that information in the separate, appropriately captioned section by reference from another section, such as Risk Factors, Description of Business, or Management's Discussion and Analysis ("MD&A").

[6] ICI's June letter recommended that public companies be required to furnish, rather than file, any climate-related information.

[7] ICI's June letter recommended that public companies be required to provide disclosure consistent with TCFD recommendations.

[8] The Proposal would define "climate-related risks" as the actual or potential negative impacts of climate-related conditions and events on a registrant's consolidated financial statements, business operations, or value chains, as a whole.

[9] The proposed requirement appears to solicit Scope 3-like information in a narrative format. "Value chain" would mean the upstream and downstream activities related to a registrant's operations. Under the proposed definition, upstream activities include activities by a party other than the registrant that relate to the initial stages of a registrant's production of a good or service (e.g., materials sourcing, materials processing, and supplier

activities). Downstream activities would be defined to include activities by a party other than the registrant that relate to processing materials into a finished product and delivering it or providing a service to the end user (e.g., transportation and distribution, processing of sold products, use of sold products, end of life treatment of sold products, and investments).

[10] Registrants must also disclose the required GHG metrics for the historical fiscal years included in its financial statements in the filing, to the extent such historical GHG emissions data is reasonably available.

[11] The Commission reasons that by requiring GHG emissions disclosure both aggregated and disaggregated investors could gain "decision-useful information regarding the relative risks" of each individually and collectively. GHG emissions would be required to be presented in gross terms, excluding the use of any purchased or generated offsets. All Scopes 1 and 2 GHG emissions would be required to be disclosed regardless of materiality because "investors need and many investors currently use this information to make investment or voting decisions." The Commission also references investors' net zero commitments as a justification for investors needing this information from public companies. Release at page 166. The Commission states that "[w]e agree with the many commenters that indicated that GHG emissions disclosure could provide important information for investors to help them evaluate the climate-related risks faced by registrants and to understand better how registrants are planning to mitigate or adapt to those risks. The proposed GHG emissions disclosures could be important to an investor's understanding of other disclosures that would be required by the proposed rule such as disclosure of the likely impacts of climate-related risks as well as any targets and goals disclosure." Release at page 165.

[12]ICI's June letter recommended that the Commission indicate in any proposal that Scopes 1 and 2 GHG emissions, and narrative disclosure consistent with the TCFD framework is material to the reasonable investor. It also recommended that the Commission should promote the development of reporting practices, including assumptions, models, and methodologies before considering requiring companies to disclose Scope 3 GhG emissions.

[13] The objective of a limited assurance engagement is for the service provider to express a conclusion about whether it is aware of any material modifications that should be made to the subject matter in order for it to be fairly stated in accordance with the relevant criteria. In such engagements, the conclusion is expressed in the form of negative assurance regarding whether any material misstatements have been identified. In contrast, the objective of a reasonable assurance engagement (the same level of assurance as an audit of financial statements) is to express an opinion on whether the subject matter is in accordance with the relevant criteria in all material respects. A reasonable assurance opinion provides positive assurance that the subject matter is free of material misstatement.

ICI's June letter recommended that the Commission not mandate third-party assurance at this time given the rapidly changing state of sustainability disclosures, but phase in such assurance over time to increase the reliability of sustainability-related information for investors provided that the benefits of doing so exceed the costs take steps to address companies' liability concerns associated with providing climate change-related information in Form 10-K.

[14] The Release identifies, by way of example, a number of industries for which Scope 3 GHG may be material.

[15] Like registrants in other sectors, registrants in the financial sector would be required to: disclose their Scope 3 emissions if those emissions are material; and describe the methodology used to calculate those emissions. A financial registrant's Scope 3 emissions disclosures would likely include the emissions from companies to which the registrant provides debt or equity financing ("financed emissions"). While financial registrants may use any appropriate methodology to calculate its Scope 3 emissions, the Partnership for Carbon Accounting Financials' Global GHG Accounting and Reporting Standard (the PCAF Standard) provides one methodology that complements the GHG Protocol and assists financial institutions in calculating their financed emissions.

[16] Release at p. 178. The Commission acknowledges that a registrant's material Scope 3 emissions is a relatively new type of metric based largely on third-party data and that they are proposing disclosure of this metric because "we believe capital markets have begun to assign financial value to this type of metric, such that it can be material information for investors about financial risks facing a company." The Release states that the Commission "attempted to calibrate …[the] proposal to balance investors' demand for this information with the current limitations of the Scope 3 emissions data." See Release at p. 182.

[17] Release at pp. 178-179 (where the Commission provides examples of what constitutes upstream and downstream activities).

[18] Release at p. 220 (the "proposed safe harbor would provide that disclosure of Scope 3 emissions by or on behalf of the registrant would be deemed not to be a fraudulent statement unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.").

[19] Release at p. 71 (stating that "registrants must bear in mind that the materiality determination is made with regard to the information that a reasonable investor considers important to an investment or voting decision"; [and to] help ensure that management considers the dynamic nature of climate-related risks, we are proposing to require a registrant to discuss its assessment of the materiality of climate related risks over the short, medium, and long term."). ICI's June letter stated that "Given that the relevance of ESG information is not always reflected in quantitative financial metrics, it is critical that the underlying legal framework be applicable to non-quantitative factors that are nevertheless material to enterprise value creation over the short-, medium-, and long-term. We did not define these timeframes by number of years. The Proposal does not define these terms either but requests comment on defining short-term as anywhere from 1-5 years, medium term as anywhere from 5-20 years, and long-term as anywhere from 10-50 years.

[20] Release at p. 173.

[21] Release at pps. 174-175.

[22] The ICI's June letter recommended that the Commission take steps to address companies' liability concerns associated with providing climate change-related information in Form 10-K to promote more fulsome disclosure.

[23] The Release defines an internal carbon price as an estimated cost of carbon emissions used internally within an organization.

[24] Such a target might be, for example, to achieve net-zero carbon emissions for all or a large percentage of its operations by 2050 or to reduce the carbon intensity of its products by a certain percentage by 2030 in order to mitigate transition risk.

[25] Examples of such line items include revenue, cost of revenue, selling, general and administrative expenses, sale of property, plant, and equipment (in statement of cash flows), inventories, intangible assets, long-term debt, or contingent liabilities.

[26] The proposal would require registrants, for purposes of determining whether the disclosure threshold has been met, to aggregate the absolute value of the positive and negative impacts on a line-by-line basis.

[27] Release at p. 280.

[28] See SEC Chair Gary Gensler, Statement on Proposed Mandatory Climate Risk Disclosures (Mar. 21, 2022), available at https://www.sec.gov/news/statement/gensler-climate-disclosure-20220321.

[29] See SEC Commissioner Hester M. Peirce, We are Not the Securities and Environment Commission - At Least Not Yet (Mar. 21, 2022), available at https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321.

[30] See SEC Commissioner Allison Herren Lee, Shelter from the Storm: Helping Investors Navigate Climate Change Risk (Mar. 21, 2022), available at https://www.sec.gov/news/statement/lee-climate-disclosure-20220321. Commissioner Lee has announced that she will be leaving the Commission, casting doubt on the importance of these questions.

[31] See SEC Commissioner Caroline A. Crenshaw, Statement on the Enhancement and Standardization of Climate-Related Disclosures for Investors (Mar. 21, 2022), available at https://www.sec.gov/news/statement/crenshaw-climate-statement-032122.