Managed Funds Association
The Voice of the Global Alternative Investment Industry

Washington, D.C. | New York | Brussels

June 17, 2022

via electronic mail: rule-comments@sec.gov

Ms. Vanessa A. Countryman
Secretary
United States Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: Request for Public Comment - The Enhancement and Standardization of Climate Related Disclosures for Investors - S7-10-22

Dear Ms. Countryman:

Managed Funds Association[1] ("**MFA**") is writing to provide the views of the alternative investment industry in response to the Securities and Exchange Commission's (the "**Commission**" or "**SEC**") request for public comment on the proposed rule, The Enhancement and Standardization of Climate-Related Disclosures for Investors (file no. S7-10-22) (the "**Proposed Rules**").

MFA is supportive of the Commission's efforts to require mandatory disclosures of climate-related matters in the Proposed Rules. However, MFA is concerned that the benefits of the disclosures to investors will be outweighed by the costs the disclosures will have on issuers and the public markets. Therefore, MFA urges the Commission to revise and enhance the Proposed Rules to provide for the appropriate balance between disclosure of material information and costs to issuers. Further, MFA urges the Commission to prioritize consistency, comparability, and reliability for uniform disclosure standards as it considers the final rules. To best accomplish these important objectives, MFA recommends that the Proposed Rules:

a. Align as closely as possible with Task Force on Climate-Related Financial Disclosure ("**TCFD**") standards to provide the appropriate disclosures to investors without unnecessary costs on issuers;

[1] Managed Funds Association (MFA) represents the global hedge fund and alternative asset management industry and its investors by advocating for regulatory, tax, and other public policies that foster efficient, transparent, and fair capital markets. MFA's more than 150 member firms collectively manage nearly $2.6 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has a global presence and is active in Washington, Brussels, London, and Asia.

b. Be interoperable with global standards to promote consistency, comparability, and reliability;

c. Appropriately balance the value of information disclosed and the cost to produce it;

d. Retain disclosure of greenhouse gas ("**GHG**") emissions with considerations for the increased burden on issuers;

e. Exclude investments from the definition of "value chain" or include a materiality qualifier to decrease compliance burden on registrants;

f. Provide additional clarity on the definition of materiality;

g. Go into effect prior to implementation of the recent adviser ESG rule;[2]

h. Streamline financial metric disclosures for the benefit of issuers; and

i. Take into consideration that increased compliance burdens could lead issuers to delist or go private.

I. INTRODUCTION

MFA members are investors in issuers and are acutely aware of the need for accurate and decision-useful climate-related disclosures that will facilitate their ability to make informed and financially responsible investment decisions on behalf of the investors they serve. MFA is supportive of the Commission's efforts to require mandatory disclosures of climate-related matters. When issuers provide consistent, comparable, and reliable information on climate-related matters, MFA members will be able to make better informed judgments about the impact of climate-related risks on investments. In particular, MFA supports the use of quality financial data to measure climate risks given the materiality and importance of climate-related matters.

However, as noted above, MFA urges the Commission to balance the benefits of disclosure of information to investors in the Proposed Rules with the costs of such disclosures to issuers. As investors, MFA members are sensitive of the relationship between requirements and costs to issuers. MFA members urge the Commission to strike the appropriate balance and adopt disclosure rules that will hold steady over the long-term because predictability of climate-related disclosures over time is essential for market participants to make informed investment decisions and for the stability and growth of public markets. The Commission should consider and prioritize

[2] SEC, *Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices*, Release No. IA-6034; IC-34594; File No. S7-17-22) (May 25, 2022), available at https://www.sec.gov/rules/proposed/2022/ia-6034.pdf.

consistency, comparability, and reliability for uniform disclosure standards as it considers the final rules.

MFA appreciates the opportunity to comment on the Proposed Rules, and hopes the Commission will consider these comments when adopting the final rules to allow for investors to obtain consistent, comparable, and reliable climate-related disclosures.

II. COMMENTS

a. Final Rules Should Align as Closely as Possible with TCFD Standards to Provide the Appropriate Disclosures to Investors without Unnecessary Costs on Issuers

The Proposed Rules are modeled, in part, on the TCFD's recommendations.[3] However, the Proposed Rules go further than what the TCFD recommends by requiring a level of detail and granularity far exceeding the TCFD framework. MFA believes that the final rules should be as closely-aligned to the TCFD framework as possible in order to provide the appropriate disclosures to investors without unnecessary costs on issuers. The additional information required by the Proposed Rules that goes beyond TCFD does not provide a material benefit to investors and in fact may harm the public markets by creating undue costs on issuers to produce such information.

In recent years, investors have made demands for climate-related information to understand how climate issues may affect their investment.[4] In response to this demand, a number of jurisdictions have or have begun to adopt climate-related disclosure frameworks. For example, the EU, UK, New Zealand, India, Japan, and Hong Kong have adopted several TCFD disclosure recommendations into their regulatory frameworks.[5] As such, the TCFD framework has been widely accepted by issuers, investors, and other market participants. The Proposed Rules go beyond the requirements of the TCFD framework in several areas. By requiring additional and more granular requirements than the TCFD framework, the Proposed Rules present a significant risk of increased compliance costs and confusion without a comparable benefit to investors and the public markets.

Several examples illustrate how the Proposed Rules go beyond TCFD. In regard to governance, the TCFD standards are concisely stated without being overly detailed and prescriptive. The TCFD item recommends that the disclosure "[d]escribe the board's oversight of climate-related risks and opportunities" and "[d]escribe management's role in assessing and managing climate-

[3] *See* 87 Fed. Reg. 21334, 21345.
[4] *See,*Climate Action 100+ (an investor-led initiative with over 700 investors managing $68 trillion in assets, as of April 2022), available at https://www.climateaction100.org/.
[5] *See, e.g.*, Proposal for a Directive of the European Parliament and of the Council, amending Directive 2013/34 EU, Directive 2004/109 EC, Directive 2006/43 EC, and Regulation (EU) No. 537/2014, as regards to corporate sustainability reporting (Apr. 2021), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0189; *See also*, International Organization of Securities Commissions, *Report on Sustainability-related Issuer Disclosures*, Final Report (June 2021).

related risks and opportunities."[6] The Proposed Rules, however, are much more detailed and prescriptive. For board oversight, the Proposed Rules would require registrants to "identify any board members or board committees responsible for the oversight of climate-related risks" and disclose "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."[7] With respect to management oversight, the Proposed Rules call for disclosure of "whether certain management positions or committees are responsible for assessing and managing climate-related risks…" and "disclose the relevant expertise of the position holders or members in such detail as necessary to fully describe the nature of the expertise."[8] Additional details on governance disclosure are enumerated in proposed Items 1501(a) and 1501(b). We urge the Commission to consider adopting the more principle-based TCFD standard which would allow registrants to better tailor disclosures to their unique circumstances and to the demands of market participants.

The TCFD framework provides that for disclosures related to strategy, the disclosure should describe " the climate-related risks and opportunities the organization has identified over the short, medium, and long term," "the impact of climate-related risks and opportunities on the organization's business, strategy, and financial planning," and "the resilience of the organization's strategy, taking into consideration different climate-related scenarios, including a 2°C or lower scenario."[9] While the Proposed Rules track, in part, the TCFD recommendations,[10] the rules also require registrants to disclose impacts as to "[b]usiness operations, including the types and locations of its operations; [p]roducts or services; [s]uppliers and other parties in its value chain; [a]ctivities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes…" and many others.[11]

The Proposed Rules go further than the TCFD framework in other areas as well. The TCFD calls for disclosure of "how the organization identifies, assesses, and manages climate-related risks."[12] The Proposed Rules, however, would require significantly more detail, such as how the registrant "determines the relative significance of climate-related risks compared to other risks; …considers existing or likely regulatory requirements or policies, such as GHG emissions limits, when identifying climate-related risks; …considers shifts in customer or counterparty preferences, technological changes, or changes in market prices in assessing potential transition risks; and…determines the materiality of climate-related risks…"[13]

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[6] *See TCFD*, Overview, 16-17 (Mar. 2021) available at https://assets.bbhub.io/company/sites/60/2020/10/TCFD_Booklet_FNL_Digital_March-2020.pdf
[7] 87 Fed. Reg. 21334, 21359.
[8] *Id*. at 21360.
[9] *See TCFD*, Overview, 17 (Mar. 2021) available at https://assets.bbhub.io/company/sites/60/2020/10/TCFD_Booklet_FNL_Digital_March-2020.pdf
[10] *See* 87 Fed. Reg. 21334, 21353.
[11] *Id*. at 21354.
[12] *See TCFD*, Overview, 17 (Mar. 2021) available at https://assets.bbhub.io/company/sites/60/2020/10/TCFD_Booklet_FNL_Digital_March-2020.pdf
[13] *See* 87 Fed. Reg. 21334, 21361.

And lastly, as the disclosures relate to metrics and targets, the TCFD framework simply calls for a registrant to "[d]isclose the metrics and targets used to assess and manage relevant climate-related risks and opportunities where such information is material."[14] However, the Proposed Rules call for a number of metrics without regard to a materiality qualifier, including GHG emissions and financial impact and expenditure metrics at the 1% threshold.

Overall, MFA believes that the final rules should more closely align with the current TCFD framework because this alignment will be most beneficial to investors and strike the appropriate balance between access to material information and the cost to produce such information by issuers. By providing additional and more granular requirements than the TCFD framework, the Proposed Rules present a significant risk of increased compliance costs and confusion without a comparable benefit to investors and the markets. The TCFD framework has been adopted by jurisdictions worldwide, and many issuers, investors, and other market participants are familiar with the framework and its benefits. The additional information required by the Proposed Rules that goes beyond TCFD does not provide a material benefit to investors and in fact may harm the public markets by creating undue costs on issuers to produce such information. In addition, alignment with TCFD will help to promote interoperability with disclosure rules in other global jurisdictions. Accordingly, MFA recommends that the Commission align the Proposed Rules as closely as possible with TCFD standards to provide the appropriate disclosures to investors without unnecessary costs on issuers.

b. Final Rules Should be Interoperable with Global Standards to Promote Consistency, Comparability, and Reliability

MFA members, along with other issuers, investors, and market participants, operate in a number of jurisdictions, including the United States, United Kingdom, European Union, and Asia. As discussed above, many of these jurisdictions have adopted a number of TCFD disclosure recommendations into their regulatory frameworks.

Investors, including MFA members operate in a number of these jurisdictions and, as a result, are subject to several international regulatory frameworks with respect to climate-related disclosures. Therefore, MFA requests that the final rules be designed in a way that is interoperable with global standards and the climate-related disclosure requirements adopted in other jurisdictions. This interoperability will allow issuers, investors, and other market participants to make consistent, comparable, and reliable disclosures across the jurisdictions in which they operate and allow investors to easily understand and disseminate the climate-related information being disclosed by a registrant no matter the jurisdiction. Interoperability will also allow entities subject to the rules to reduce the compliance burdens they face by virtue of operating in multiple jurisdictions. Conversely, a lack of interoperability will not only frustrate investors' abilities to obtain consistent,

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[14] *See TCFD*, Overview, 17 (Mar. 2021) available at https://assets.bbhub.io/company/sites/60/2020/10/TCFD_Booklet_FNL_Digital_March-2020.pdf

reliable, and comparable climate-related disclosures across jurisdictions, but also increase the compliance burdens that global issuers, investors, and other market participants face in complying with the climate-related disclosure requirements. Thus, MFA recommends that the Commission adopt final rules that are interoperable with global standards to promote consistency, comparability, and reliability.

c. Appropriate Balance Between Value of Information Disclosed and Cost to Produce It

While MFA is supportive of the Commission's efforts to require mandatory disclosures of climate-related matters, MFA urges the Commission to consider the cost to issuers of producing the required disclosures against the value of the information disclosed to investors. As noted earlier, the TCFD framework has been widely accepted by issuers, investors, and other market participants. By imposing requirements that go beyond the traditional TCFD framework, issuers will struggle to comply and face unnecessary burdens. Moreover, MFA notes that information provided in accordance with the TCFD framework is an appropriate amount of information for investors in making reasonable and accurate investments, and any information beyond the TCFD framework is costly to issuers and often unnecessary.

For example, the Proposed Rules require the conditional disclosure of a registrant's transition plan, scenario analysis, internal carbon price, and climate-related targets and goals. While requiring a registrant to disclose a transition plan could help investors evaluate whether the registrant has a climate-related strategy, the disclosure requirements around a transition plan, as proposed, would require a registrant to not only disclose the plan, but also disclose associated metrics and targets, climate-related risk management strategy and fiscal year updates and progress.[15] Similarly, if a registrant uses a scenario analysis, the registrant then must also disclose parameters, assumptions, analytical choices, and financial impacts on the registrant under each scenario.[16] Or with respect to a registrant using an internal carbon price or setting climate-related targets and goals, the Proposed Rules require disclosure that goes far beyond the traditional TCFD framework.[17]

The breadth and scope of disclosure related to these items, beyond simply disclosing that a transition plan or internal carbon price has been adopted, places an undue burden on a registrant because a registrant may struggle to comply with all the disclosure requirements associated with a transition plan, scenario analysis, internal carbon price, or climate-related targets and goals in a manner far beyond the requirements of TCFD. MFA is concerned that these new disclosure

[15] *Id*. at 21361-62.
[16] *Id*. at 21356-57.
[17] The Proposed Rules require a registrant, if used, to disclose an internal carbon price, including the price in units of the registrant's reporting currency, total price, boundaries for measurement of overall carbon dioxide, and rationale for selecting the internal carbon price. *See* 87 Fed. Reg. 21334, 21355. With respect to disclosing climate-related targets and goals, the Proposed Rules require disclosure of the activities and emissions included in the target, the unit of measurement, the defined time horizon by which the target is to be achieved, and many others. *See* 87 Fed. Reg. 21334, 21406.

requirements will introduce significant new costs to issuers that are unjustified by the value of the information to investors, and their conditional nature may have a chilling effect on issuers choosing to develop such metrics in the future. MFA therefore proposes that phase-in requirements and safe harbor provisions be adopted, possibly industry-by-industry, for a registrant once such a metric is used. Phase-in and safe-harbor provisions would help mitigate the cost for registrants while still allowing investors to access important information.

Regarding the disclosure of a scenario analysis, MFA supports the Commission's adoption of a safe harbor provision, particularly given the predictive and forward-looking nature of a scenario analysis.[18] MFA believes that such a safe harbor is important as it will prevent discouragement among registrants from not disclosing a scenario analysis due to potential data quality issues associated with such predictions. Moreover, MFA urges the Commission to include ample space for registrants to explain the methodologies associated with their scenario analysis. By providing registrants with ample space to explain their methodology for the scenario analysis disclosure, investors will be able to better understand the underlying methodology while also being able to compare a registrant's business strategy against future climate scenarios.

Another important consideration for striking the appropriate balance between the cost of disclosing this information for issuers and its value to investors is the location of the disclosures. If disclosures are required to be provided under Regulation S-K as proposed, issuers would face heightened liability, which could pose undue costs, burdens and challenges. Under established law, this would mean that in addition to general anti-fraud liability under Rule 10b-5 of the Securities Exchange Act of 1934 (the "**Exchange Act**"), such disclosures would also be subject to Section 18 of the Exchange Act, and to the extent such disclosures are incorporated by reference into a registration statement, subject to liability under Sections 11 and 12 of the Securities Act of 1933 (the "**Securities Act**"). This will create significantly greater risks of litigation from Section 11 of the Securities Act and Section 18 of the Exchange Act, as plaintiffs would not have to prove scienter or negligence, as compared to Rule 10b-5 claims. We believe that the general anti-fraud liability of Exchange Act Section 10(b) and Rule 10b-5 provides the appropriate level of investor protection for this type of information, rather than the heightened liability associated with information that is filed with the SEC and will therefore better strike the balance between the needs of investors and the cost to issuers.

Accordingly, MFA recommends that the Commission balance the value of information disclosed and the cost to produce it, including by requiring climate-related disclosures in the final rules be "furnished" rather than "filed," as such treatment would be more appropriate for these types of disclosures and would meet the needs of investors utilizing the information disclosed.

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[18] *See* 87 Fed. Reg. 21334, 21357.

d. Final Rules Should Retain Disclosure of GHG Emissions with Considerations for the Increased Burden on Issuers

MFA supports the Proposed Rules' requirement that registrants disclose their GHG emissions for the most recently completed fiscal year.[19] As indicated in the Proposed Rules, investors use GHG emissions data to better assess a company's transition risk, its stated emissions reduction goal, and exposure to climate-related risks. Currently, large institutional investors, financial institutions, and issuers have established interim targets to reduce GHG emissions by 2030 within the larger goal of being net-zero by 2050. As MFA appreciates the burdens that smaller reporting companies may face in preparing GHG emissions disclosures, we urge the Commission to design the rules in a way that encourages all issuers to provide these disclosures over time in a way that is appropriately tailored and not unduly burdensome. Quantifiable and comparable GHG emissions information is critical for issuers of all types and sizes to assess an entity's transition risk, any net-zero goals, and exposure to climate-related risks.

We also request that the Commission provide greater clarity around when emissions would be considered "material" and thus required to be disclosed. Currently, under the Proposed Rules, issuers from different industries and of varying size could draw significantly different conclusions as to when emissions are material. We urge the Commission to consider whether a materiality standard that will result in more consistent application across the entire market would be more appropriate. A consistent standard will be easier to implement and will provide MFA members with the consistent and comparable data needed to better assess climate-risk across investments.

Relatedly, MFA supports the Proposed Rule's attestation requirements associated with the GHG disclosures as well as the phase-in periods and exclusion of non-accelerated filers and smaller reporting companies. Since the GHG emissions disclosures would be provided outside of a registrant's financial statements, those disclosures would not be subject to audit procedures as part of the issuer's audit of its financial statements. However, subjecting the GHG emissions disclosures to some level of attestation will help to ensure the reliability and accuracy of the disclosures being made. The Proposed Rules strike the right balance of verification on this point. At the same time, the exclusion of non-accelerated filers and smaller reporting companies from the attestation requirement will aid in relieving the burden on those issuers that may face the greatest challenges. We also support the flexibility the Proposed Rules provide with regards to the wide population of independent firms that could qualify to perform the attestation function and the fact that the Proposed Rules do not require such firms to be PCAOB-registered audit firms. The Proposed Rules provide a reasonable framework for describing the types of providers that may be qualified to perform the attestation function and then permit issuers to select a provider they deem appropriate within that framework. We believe such flexibility will aid issuers in meeting this requirement.

[19] *Id.* at 21373.

While MFA supports the phase-in periods for determining when registrants need to disclose GHG emissions data, MFA urges the Commission to consider whether phase-in periods should also be determined by industry.[20] By adopting a phase-in period that is sector specific, investors and registrants in a specific industry will be able to better determine what climate-related disclosures are most relevant to a specific industry. MFA notes that many companies have looked to sector-specific guidelines, such as those put forth by the Sustainability Accounting Standards Board,[21] and MFA believes a similar sector specific approach should be taken in finalizing the phase-in period rules.

Finally, in order reduce the burden and costs on issuers, MFA recommends that the Commission consider whether additional liability protections and safe harbors can be afforded to issuers, including, as discussed above, allowing disclosures to be "furnished" rather than "filed."

e. Final Rules Should Exclude Investments from the Definition of "Value Chain" or Include a Materiality Qualifier to Decrease Compliance Burden on Registrants

The Proposed Rules require a registrant to disclose any climate-related risks reasonably likely to have a material impact on the registrant's business or consolidated financial statements.[22] The Proposed Rules 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."[23] The Proposed Rules then define "value chain" as

> 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*).[24]

MFA believes the Commission should either exclude investments from the definition of value chain or qualify the definition to cover only material investments. The inclusion of investments in the value chain will place an undue, and in some cases unmanageable, burden on registrants whose sole business operations are to invest in companies. The compliance burden placed on

[20] *Id*. at 21411-412
[21] SASB Standards, Example of SASB's Industry Specific Approach, available at https://www.sasb.org/industry-specific/.
[22] *See* 87 Fed. Reg. 21334, 21349.
[23] *Id*. (emphasis added).
[24] *Id*. (emphasis added).

registrants, including smaller reporting companies, that invest in thousands of companies will be immense as these subject companies will struggle to disclose the climate-related risks associated with their investments. These registrants often do not exercise control over such investments and do not have access to sufficient information and data on climate-related risks from such investments. Accordingly, MFA recommends that the Commission exclude investments from the definition of value chain or qualify the definition to cover only material investments as doing so will ease the compliance burden on registrants and still accomplish the Commission's goal of having registrants disclose the full potential for exposure to material climate-related risks.

f. Final Rules Should Provide Additional Clarity on the Definition of Materiality and Limit Unqualified Disclosures

We encourage the Commission to provide additional clarity and consistency on the definition of materiality as applied throughout the Proposed Rules and use a materiality standard consistent with the SEC's historical materiality threshold. The proposal makes the general statement that it will adhere to the traditional materiality standard. However, while the general statement is helpful, many of the required disclosures under the Proposed Rules are not conditioned on a materiality qualifier. For example, governance disclosures, targets and scenario planning, and the financial statement metrics under the proposed amendment to Regulation S-X, all lack a materiality qualifier. While requiring disclosures that are not qualified by the materiality standard is not unprecedented,[25] the sheer number of unqualified disclosures may impose excessive costs on registrants to comply.

In addition, by including impacts within a registrant's "value chain," the proposed rules go far beyond the standard materiality analysis, requiring registrants to assess both the materiality to the company and its upstream and downstream activities. This would force issuer registrants to not only take inventory of their own climate risks, but also those of third parties, which the registrant does not directly control. In effect, this extends the standard materiality analysis to both material impacts on their operations and the operations of their customers and partners in their value chain. For MFA members, advisers would need to consider the impact from and on investments, which would lead to substantially increased compliance costs that would not benefit investors. Thus, MFA recommends that the Commission adopt final rules that provide additional clarity on the definition of materiality and limit unqualified disclosures.

g. Sequencing the Proposed Rules with the Recent Proposed Adviser ESG Rule

On March 25, 2022, the Commission proposed amendments to the rules and reporting forms for funds' and advisers' incorporation of environmental, social, and governance ("**ESG**") factors, the Enhanced Disclosures by Certain Investment Advisers and Investment Companies about

[25] *See* 17 CFR § 229.104(a), (b); *see also* 17 CFR § 229.402.

Environmental, Social, and Governance Investment Practices (the "**Adviser ESG Rule**").[26] The Adviser ESG Rule is highly dependent on advisers receiving robust disclosures from registrants on various ESG factors. For example, under the Adviser ESG Rule, advisers of environmentally-focused funds would be required to disclose GHG emissions associated with their portfolio investments. Advisers can only provide this information when and if they receive reliable GHG emissions data from registrants.

MFA urges the Commission to allow sufficient time for issuer disclosures to develop in response to new rules before finalization of the Adviser ESG Rule. This sequencing will allow issuers, investors, and other market participants to adequately digest the new disclosures available. It will also permit funds to design appropriate processes and procedures based on new issuer disclosures and climate-related data. The failure to allow for this type of sequencing would place an undue burden on advisers and introduce inconsistency and confusion amongst various investors and other market participants. Accordingly, MFA recommends that the Commission sequence implementation of its climate/ESG rules so that issuers provide climate disclosures before advisers are required to comply with the Adviser ESG Rule.

h. Financial Metrics Disclosures Should be Streamlined to Standards Most Issuers Would Find Feasible

While MFA supports the requirement to provide disclosure on material financial metrics on climate-risks and climate-related matters, the Commission should consider which financial metrics are useful to investors and can be easily produced by issuers. The Proposed Rules would require reporting that is more detailed than currently required by TCFD and SASB reports and is likely beyond what most issuers would find feasible.[27] As an illustration, under Proposed Rule 14a-02(b),[28] registrants would be required to disclose the aggregate climate-related impact metrics (or expenditure cost metrics) to the extent any existing financial statement line items is exceeded by 1% or more of the particular line item in a given year. This is significantly below the 5% threshold used by some registrants and auditors in assessing materiality.[29] MFA is concerned that issuers will struggle to provide such detailed and granular financial metrics disclosures, which go beyond the TCFD recommendations and therefore may not provide a material benefit. MFA members believe that the financial metrics currently required by TCFD and SASB reports provide the necessary level of information that is beneficial to investors. Going beyond what is required by these rules will place significant costs on issuers without providing a material benefit to investors.

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[26] SEC, *Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices*, Release No. IA-6034; IC-34594; File No. S7-17-22) (May 25, 2022), available at https://www.sec.gov/rules/proposed/2022/ia-6034.pdf.
[27] The TFCD recommended disclosures only require an entity to "disclose the metrics used by the organization to assess climate-related risks and opportunities in line with its strategy and risk management process." at *TCFD*, Overview, 17 (Mar. 2021).
[28] *See* proposed 17 CFR § 210.14-02(b).
[29] *See* Staff Accounting Bulletin No. 99, 64 Fed. Reg. 45149, 45151-52 (Aug. 19, 1999).

Because of this, MFA recommends that the Commission consider financial metrics disclosures that are more streamlined, feasible to issuers and more closely aligned with the TCFD framework.

i. Increased Compliance Burdens on Companies May Lead to Delisting or Decisions to Go Private

MFA is concerned that the increased burden and compliance costs of the Proposed Rules may lead some registrants to delist or "go private" in order to avoid the increased costs. MFA notes that after the passage of the Sarbanes-Oxley Act of 2002,[30] many small and mid-sized issuers went private to avoid the Act's burdensome disclosure requirements and compliance costs.[31] The Proposed Rules contain many novel disclosures that are detailed and granular and will require companies to establish new systems, controls and process and engage external third-party advisors. In addition, the Proposed Rules require disclosures that go beyond the traditional TCFD framework. As a result, the Proposed Rules, if adopted in their current form, may have a similar effect on small and mid-sized registrants as did Sarbanes-Oxley in 2002. Similarly, the Proposed Rules may discourage companies from choosing to go public. MFA requests that the Commission consider the compliance costs of the Proposed Rules on small and mid-sized registrants and adopt final rules that do not increase the attractiveness of delisting or going private.

III. CONCLUSION

For the reasons stated above, MFA urges the Commission to revise and enhance the Proposed Rules to provide for the appropriate balance between disclosure of material information and costs. MFA is concerned that the benefits of the required disclosures to investors will be outweighed by the costs the disclosures will have on issuers and the public markets under the Proposed Rules. MFA also believes that the Commission should consider and prioritize consistency, comparability, and reliability for uniform disclosure standards as it considers the final rules. As investors, MFA members are sensitive of the relationship between requirements and costs to issuers. As discussed, the Proposed Rules could have negative effects on investors, the public markets, and issuers.

In order to best meet the above objectives while minimizing these negative effects, MFA supports the adoption of final rules that converge with the TCFD and are interoperable with global standards to promote consistency, comparability, and reliability. MFA also believes the final rules should retain disclosures of GHG emissions while providing due consideration for increased compliance burdens on issuers. The Commission should also consider excluding investments from the

[30] Pub. L. 107-204, 116 Stat. 745. (codified at various sections of 11, 15, 18, 28, and 29 U.S.C.).

[31] *See* Marc Morgenstern and Peter Nealis, *Going Private: A Reasoned Response to Sarbanes-Oxley?* (2004); *See also* Sarbanes-Oxley: A Price Worth Paying, ECONOMIST, May 21, 2005 (discussing that smaller firms that could not afford the increased costs to comply with Sarbanes-Oxley caused those companies to delist their stock or even "go private" to avoid the compliance costs) and Ellen Engel, et al., *The Sarbanes-Oxley Act and Firms' Going-Private Decisions*, 44 J. ACCT. AND ECON. 116, 130 (2007).

definition of value chain or including a materiality qualifier to alleviate the compliance burden on registrants that solely invest in others.

MFA also asks the Commission to consider sequencing the Proposed Rules with the recent ESG Funds Rule and streamlining the disclosure requirement on material financial metrics to what issuers can easily produce. Lastly, MFA urges the Commission to consider the increased costs and compliance burden placed on registrants, especially as the Proposed Rules go further than the TCFD framework. As seen in years' past, smaller and mid-sized registrants may delist or go-private to avoid the undue burden.

We appreciate the opportunity to provide comments, and please do not hesitate to contact David Lourie, Vice President & Senior Counsel or the undersigned at (202) 730 2600.

Respectfully Submitted,

Jennifer W. Han
Executive Vice President
Chief Counsel & Head of Global Regulatory Affairs

cc: The Honorable Gary Gensler, Chair
The Honorable Allison Herren Lee, Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner