June 13, 2022

Vanessa A. Countryman
Secretary
Attention: File Number S7-10-22
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Ms. Countryman:

The undersigned organizations appreciate this opportunity to comment on the proposed rule of the Securities and Exchange Commission (SEC), "The Enhancement and Standardization of Climate-Related Disclosure for Investors," file number S7-10-22 (the "Proposal"). We represent real estate owners, banks, operators, investors, lenders, builders, developers, hospitality/resorts, agents, and service providers.

Our organizations support the SEC's efforts to provide investors with material climate-related disclosures that are decision-useful. However, we believe that specific elements of the Proposal would be difficult or impossible for many registrants to currently implement. While many of the undersigned organizations will be submitting individual comment letters in response to the Proposal, we wanted to take the opportunity to file a response that reflected high level concerns shared across the real estate finance industry as well as recommendations on how to address these concerns

The suggested implementation time frame is inadequate.

In the Proposal, the SEC repeatedly references an adoption period of December 2022 for "illustrative" purposes. Given the wide range of proposed disclosures, with "limited" or "reasonable" assurance required in many instances, we believe that a year-end adoption date is too aggressive. Market participants require the opportunity to develop efficient and effective disclosure regimes tailored to their specific markets.

We would suggest, therefore, that the proposed compliance deadlines be extended by at least one year and continue to incorporate the proposed staging according to a registrant's size and activity. Scope 3 requirements would need additional flexibility, with the reporting deadline pushed back by at least an additional two years.

There is precedent to allowing a reasonable amount of time for organizations to hire staff and purchase or build the systems needed to implement disclosure requirements Similarly, institutions that sign onto the Partnership for Carbon Accounting Financials (PCAF) have three years to measure and disclose the greenhouse gas (GHG) emissions associated with their portfolio of loans, investments, and other financial products and services. The PCAF timeline is indicative of the

challenges that financial institutions face with disclosing Scope 3 emissions. While the Proposal recognizes the challenges around Scope 3 emissions reporting, the proposed compliance timeline does not sufficiently take those challenges into account.

Additionally, as shared with SEC staff and Commissioners over the past year, many in the industry have been working together to develop climate-related disclosures specific to the commercial real estate finance sector. We are concerned that an aggressive implementation timeline could short circuit that progress.

It is unclear how climate-related disclosures would be incorporated into a financial accounting framework.

An overarching concern among the undersigned is the integration of the proposed climate-related disclosures into the financial accounting framework under Regulation S-X. In the Proposal, the SEC mandated that companies disclose certain climate-related financial statement metrics in notes to their audited financial statements. As noted in an analysis of the Proposal by Bloomberg, *"these footnotes would be part of companies' audited financial statements—not the risk factors or management's discussion and analysis (MD&A) sections, which are the SEC's traditional financial reporting turf."*

However, as *Bloomberg* notes further:

> *"No part of U.S. GAAP—generally accepted accounting principles—spells out accounting requirements for issues related to climate change risk. [The Financial Accounting Standards Board](FASB)] leaders have repeatedly said that writing rules about things like carbon footprints isn't in its wheelhouse unless an issue affects a financial statement line item."*

Proposed Article 14 of Regulation S-X, which would require certain climate-related financial statement metrics and disclosure to be included in a note to a registrant's audited financial statements, would present significant interpretative issues, including what represents the baseline for the analysis and how different expenditures should be treated. Given the level of interpretation that would be required, we expect the outcome would not be comparable across registrants. It would also likely result in disclosure of large amounts of extremely granular data that are unlikely to add value to the users of financial statements. Further, such information would not be consistent with or indicative of how registrants monitor or manage climate risk.

A registrant would, for example, be required to disclose the impact of transition activities or severe weather events and other natural conditions on any relevant line items in the registrant's consolidated financial statements if the sum of the absolute values of all the impacts on the line item is at least 1% of the total line item for the relevant fiscal year. A key concern with this approach is that a specified threshold is not a substitute for materiality.

The proposed 1% thresholds also would present significant operational challenges. Until data are more accessible and models more standardized, the 1% calculation requirement would be difficult (if not unreasonable) to include in financial reporting and would result in unnecessary

liability risk for the registrant. In addition, registrants would still need to evaluate each transaction to determine if it counts towards that threshold and would not be able to calculate a dollar value for that threshold until the end of the relevant period. We recommend, instead, that the SEC abandon the 1% thresholds in favor of following its own recent Regulation S-K reforms for "materiality-focused" and "principles-based" discussions in Form 10-K's MD&A.

If the SEC believes that enhanced financial statement disclosure is necessary, it should instead **work with key stakeholders and accounting standards setters such as FASB to evaluate and, if appropriate, adopt disclosure standards with respect to climate-related matters**. The creation of novel climate accounting standards is a highly impactful and significant undertaking that merits a robust standard-setting process with involvement from stakeholders including registrants, investors, and auditors. This will also undoubtedly be a lengthy process and one that is perhaps just starting.[1] Therefore, even if organizations are able to capture required data, it will take time to understand how best to integrate into their financial reporting, including for those companies who already produce publicly-available sustainability reports.

Scope 1 and Scope 2 GHG Emissions Disclosure

The Proposal would require companies to disclose their Scope 1 and Scope 2 emissions. If "actual, determined"[2] data is not "reasonably available," the SEC states that it would permit a registrant 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." Many, if not most, of our member organizations would need to rely on estimates to disclose the proposed required data in their 10-Ks. If final data later become available, they would be required to re-disclose "material differences" in a subsequent filing.

We believe this process would be unnecessarily costly and burdensome, particularly given the number of people across teams (e.g., accounting, financial planning and analysis, business groups, etc.) who would have to both develop reasonable estimates for fourth quarter reporting and then run detailed processes to determine and provide assurance for actuals included in subsequent filings. It could also put the registrant in the difficult position of taking liability risk for estimated data, which is inherently uncertain and can be unreliable, and having a duty to update if there are material differences in the estimates reported and actual data. (This approach also raises practical issues with respect to obtaining attestation over estimates that are likely to be revised.)

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[1] We note that in June 2021 the FASB published an Invitation to Comment, *Agenda Consultation,* to solicit stakeholder feedback about the FASB's standard-setting process and its future standard-setting agenda. According to the SEC, respondents to the consultation urged the FASB to continue to monitor the business environment and suggested certain targeted issues for potential standard setting along with requests for broader disclosures regarding the impact of climate-related issues on the financial statements. Additionally, the FASB has added a project to its research agenda to explore accounting for and disclosure of financial instruments with climate-linked features.

[2] As discussed in the Real Estate Roundtable's response to this Proposal, "actual, determined" GHG emissions data (as distinguished from "estimated" data) is the undefined term the Commission uses at proposed 17 C.F.R. § 229.1504(e)(4)(i). [Presumably,] that term refers to all final, numerical readings from energy meters, utility bills, and other documents received by a registrant to calculate Scopes 1 and 2 (and where appropriate, Scope 3) emissions for the prior fiscal year."

Furthermore, some of our member organizations remain unclear about the calculation mechanics of Scope 1 and Scope 2, regardless of whether they need to be provided as estimates or actuals. The Proposed Rule defines Scope 1 GHG emissions as direct emissions from operations that are owned and controlled by a registrant, and Scope 2 GHG emissions as indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a registrant. The delineation of Scopes 1, 2, and 3 may not be clear for certain companies engaged in real estate finance.[3] Moreover, the Proposal's use of accounting principles for setting organizational boundaries may conflict with other standards that some registrants use for voluntary reporting, such as those in the GHG Protocol.

We would recommend:

- Incorporating "actual, determined" emissions data in the first filing for which they are available that further allows ample time to obtain third-party attestations. (For example, assuming a January-December fiscal year, if the required data could be identified and vetted by February, include in the Q1 filing);

- Regarding Scope 1 and Scope 2 GHG emissions, the SEC should provide greater clarity and guidance regarding their application, if relevant, to CRE finance industry participants; and

- The Proposal's safe harbor for Scope 3 emissions disclosure, discussed below, should be extended to Scope 2 emissions disclosure, which also requires frequent reliance on third-party data and presents the same considerations and liability concerns as Scope 3 emissions disclosures based on estimates.

Scope 3 Emission Disclosure and Safe Harbors

Under the Proposal, disclosure of Scope 3 greenhouse gas emissions is required if material or if the registrant has set an emissions reduction goal that includes Scope 3 emissions.

Scope 3 emissions are not easy to measure or account for. According to the Greenhouse Gas Protocol and the definition in the Proposal, Scope 3 encompasses 15 different categories, some of which are difficult to clearly link to certain real estate activities. Furthermore, given the absence of climate-related disclosure requirements in a wide range of transaction documents, registrants will often not have access to sources of data necessary to measure and account for Scope 3 emissions.

Given the above-stated difficulties in calculating Scope 3 emissions, many of our member organizations believe that Scope 3 disclosure should not be mandatory unless part of a clearly

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[3] One example is when a CRE finance industry participant who owns or controls loans, bonds and other debt instruments secured by commercial real estate must exercise remedies against a defaulted obligor and the collateral. The result of these remedies is that they now own or control the property.

articulated emissions reduction plan (and limited to Scope 3 targets in the plan), and make the following additional recommendations:

- Registrants should be allowed to furnish, rather than file, that disclosure. Allowing registrants to furnish rather than file Scope 3 disclosure would appropriately mitigate litigation exposure for companies based on such information, since the information then would not be subject to liability under Section 18 of the Exchange Act or Sections 11 and 12 of the Securities Act.

- At the very least, consistent with our general comment on implementation period above, we recommend a delay in Scope 3 reporting requirements by at least two additional years. A prevailing sentiment among our members is that there is simply too much to do in too little time. We urge the SEC, therefore, to provide the time needed to accurately and comprehensively identify Scope 1 and Scope 2 emissions before having to develop the systems and processes necessary for Scope 3 emissions disclosures.

- Finally, we strongly support the SEC's proposed safe harbor and believe it should be strengthened in light of the volume of data and number of different sources registrants may need to obtain information from in order to comply with the SEC's proposed disclosure requirements. For example, the safe harbor is confusingly worded and is too limited in only covering disclosures "deemed not to be a fraudulent statement." The safe harbor should apply, unless the registrant has actual knowledge that the third-party information it is using in connection with its Scope 3 disclosures is erroneous. In addition, the Scope 3 safe harbor should cover all good faith decisions that Scope 3 reporting is not required, and the safe harbor should be in place indefinitely, without any future sunsetting.

Conclusion

The undersigned organizations welcome the opportunity to respond to this important Proposal. While many of us will submit additional letters on behalf of our individual organizations, we believe it is important to share common themes and recommendations across the real estate industry. Most importantly, we recommend:

- Delaying most of the proposed compliance deadlines by at least a year. And given the complexities related to the calculation of Scope 3 emissions in particular, **if this disclosure remains a requirement** in the final rule, the related compliance deadline should be extended by at least two years;

- Abandoning the 1% line item disclosure thresholds in favor of the SEC's own recent Regulation S-K reforms for "materiality-focused" and "principles-based" discussions in Form 10-K's MD&A;

- Allowing the incorporation of "actual, determined" Scope 1 and Scope 2 emissions data in the first filing for which they are available;

- Limiting mandatory Scope 3 disclosure and allowing registrants to furnish rather than file Scope 3 emissions data; and

- Strengthening the proposed Scope 3 safe harbor and extending these safe harbor protections to Scope 2 disclosures as well.

Thank you for considering our comments. Please contact Sairah Burki at sburki@crefc.org with any questions.

Sincerely,

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Housing Policy Council
Institute for Portfolio Alternatives
Mortgage Bankers Association
NAIOP, the Commercial Real Estate Development Association
Nareit
National Apartment Association
National Association of Home Builders of the United States
National Association of REALTORS®
NMHC
The Real Estate Roundtable