June 17, 2022

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

Re: Comments by GPA Midstream Association on SEC's Proposed Rules on the Enhancement and Standardization of Climate-Related Disclosures for Investors (File No. S7-10-22)

Dear Ms. Countryman,

The GPA Midstream Association ("GPA Midstream") appreciates the opportunity to submit its comments to the request by the Securities and Exchange Commission (the "SEC" or the "Commission") for public input on the enhancement and standardization of climate-related disclosures for investors (File No. S7-10-22) (the "Proposed Rules").

GPA Midstream has served the U.S. energy industry since 1921 and has over 60 corporate members that directly employ more than 56,000 employees that are engaged in a wide variety of services that move vital energy products such as natural gas, liquified natural gas, natural gas liquids ("NGLs"), refined products and crude oil from production areas to markets across the United States, commonly referred to as "midstream activities." Fourteen of our members companies are part of the Fortune 500. The work of our members plays a vital role in the link between energy production and consumption, and indirectly creates or impacts an additional 396,000 jobs and contributes $75.3 billion to the U.S. economy. GPA Midstream members recover more than 80% of the NGLs such as ethane, propane, butane, and natural gasoline produced in the United States from more than 380 natural gas processing facilities. In the 2018-2020 period, GPA Midstream members spent over $90 billion in capital improvements to serve the country's needs for reliable and affordable energy.

At GPA Midstream, we are the primary advocate for a midstream energy sector focused on enhancing the long-term viability of natural gas, natural gas liquids, and crude oil. We develop standards, conduct industry research, educate our workforce, and improve operational safety. As advocates, we work with legislators and regulators to promote a safe and economically viable midstream sector. This includes several of our members' commitments to minimizing greenhouse

gas ("GHG") emissions from our facilities, while simultaneously providing essential products and services to the global economy.

GPA Midstream members are committed to transparency in climate-related matters to inform our shareholders and other stakeholders in a manner consistent with our Energy Infrastructure Counsel/GPA Midstream ESG Reporting Template, which serves as a disclosure guide for our members for use in voluntary sustainability reports. However, while GPA Midstream supports transparency in climate disclosures, we do not believe the expansive and prescriptive requirements proposed by the SEC are necessary, and oppose the Proposed Rules. The Proposed Rules will create unnecessary burdens and costs for registrants with little or no corresponding benefits to investors and exceed the Commission's legal authority and are otherwise contrary to law. As such, we ask the SEC not to proceed with finalizing the Proposed Rules. That said, if the Commission nonetheless proceeds to issue the final rules (the "Final Rules"), we urge it to consider these significant changes to ensure that the Final Rules are consistent with efficient markets and robust capital formation:

- Reduce the degree of granularity and ambiguity for the required disclosures under the proposed amendments to Regulation S-K. This will decrease the cost of compliance, avoid inundating investors with superfluous and potentially confusing climate disclosures and not place undue emphasis on immaterial climate-related risks.

- If GHG emissions disclosures are included, ensure that they are consistent with and reported on the same timeline as the existing GHG emissions reporting framework already established by the U.S. Environmental Protection Agency ("EPA"). This would avoid inconsistent requirements and reduce the burden and costs associated with reporting different emissions information to multiple forums. Moreover, by aligning with EPA reporting thresholds, the proposal would lessen the burden of increased compliance costs and avoid overburdening investors with information that is unlikely to improve decision-making.

- Remove the requirement for some registrants to report the emissions of upstream and downstream activities—or so-called "Scope 3" emissions. Mandating that type of disclosure would impose significant burdens across the economy, including particularly on the midstream sector, without demonstrable benefits.

- Permit registrants to use the operational control approach for purposes of reporting GHG emissions for joint ventures.

- Uniformly apply the traditional materiality standard throughout the rule. This bedrock securities law principle is essential for this proposal, to avoid vague and cost prohibitive disclosures. In particular, the Commission should include a materiality qualifier for the proposed amendments to Regulation S-X in lieu of the 1% threshold, which would be unduly burdensome and complex while yielding information of dubious usefulness to investors and emphasizing climate-related disclosure irrespective of materiality. The

Commission's longstanding, principles-based regulatory framework already addresses disclosure of material matters, including climate change-related matters, applicable to each respective issuer.

- Base all disclosure requirements on a "furnished" rather than "filed" standard of liability. Many of the disclosures are subject to assumptions, uncertainty and variability, and thus a more flexible liability standard is appropriate here.

- Review its legal authority to adopt a regulation of this scope to compel disclosures across the economy. A mandate of this magnitude should have clear direction from the Congress, which is lacking here.

1. The SEC Should Streamline and Revise the Proposed Governance Disclosures.

a. The Final Rules Should Streamline the Proposed Disclosures of Management Oversight of Climate-related Risks.

Proposed Item 1501 of Regulation S-K would require registrants to describe "management's role in assessing and managing climate-related risks."[1] Such disclosures would include, to the extent applicable, who in management is responsible for climate risk assessment and management (*e.g.*, certain management positions or committees), relevant expertise of the position holders or committee members (including supporting information to fully describe the nature of the expertise), the process by which they are informed and monitor climate risks, and the frequency of reporting to the board/committee.[2]

GPA Midstream generally supports appropriate transparency for how a registrant addresses material climate-related risks. However, we believe that the Proposed Item 1501 requirements are far too detailed and granular to provide investors with any meaningful information. Firstly, the Proposed Rules seemingly reflect that there is only one way for a registrant to acceptably handle climate-related risks. There is considerable variance among our members in the ways in which they address climate-related risks and matters, which are often based on the different facts and circumstances under which our members operate. Requiring detailed disclosure of certain management positions could be challenging for registrants because staffing can change frequently, particularly in today's tight labor market. Further, such disclosures could be misleading to investors, as investors inevitably attempt to compare practices across registrants, which could lead to false perceptions by investors that certain companies are better investments than they truly are on the basis of how they have structured management and oversight of climate-related risks at a static point in time. In addition, such disclosures naturally invite scrutiny that may inappropriately chill management's flexibility to make changes as they see fit in the course of day-to-day operations. Therefore, the Proposed Rules should be revised to call for a general description of management oversight factors to the extent that they are material.

[1] *See* proposed 17 CFR § 229.1501(b).

[2] *Id*.

b. The Final Rules Should Streamline the Proposed Disclosures of Board Oversight of Climate-related Risks.

Proposed Item 1501 of Regulation S-K, as applied to boards of directors, would require disclosure of who on the board is responsible for climate risk oversight (*e.g.*, full board, board committee, certain directors), whether any directors have "expertise in climate-related risks" (including supporting information to fully describe the nature of the expertise), whether and how the board or board committee considers climate-related risks as part of its business strategy, the process by which the board is informed about climate risks and frequency of discussion, integration of climate risks into the strategy/risk/financial oversight processes, and the board's establishment and monitoring of climate-related targets or goals.[3] As a practical matter, board practices are more fluid than the Proposed Rules assume and disclosures will be far more boiler plate and generic than the Commission intends. As well, our members are concerned that such disclosures will naturally invite scrutiny that may inadvertently chill the board's ability to adapt its processes as the board determines to be appropriate.

Additionally, the Proposed Rules appear to assume that the frequency of board meetings alone somehow constitutes material information. There is no one-size-fits-all approach to responsible corporate governance, as the prescriptive requirements of the Proposed Rules seem to suggest. The time boards have is finite, with only so much time to deal with so much information, discussing climate-related issues for many companies, even quarterly, could be excessive as such risks may not even be material to the registrant. However, mandating that our members disclose the frequency with which they discuss climate-related issues could be misleading to investors as they inevitably attempt to compare board practices across companies, which could lead to false perceptions by investors that certain boards are better climate stewards on the basis of frequency alone, a dubious contention at best. Moreover, when companies know that any internal considerations or changes in policy will be subject to disclosure requirements, boards will necessarily become more cautious and scripted in discussing these matters.

GPA Midstream and our members also believe that the requirement to disclose which directors have "climate-related expertise" will incentivize corporate behavior in a way that undermines the objectives of the Proposed Rules. By requiring registrants to disclose whether any directors have experience in climate-related risks, even companies without truly material climate-related risks will be incentivized to recruit such directors simply to have more favorable disclosures or, depending upon the weight that ESG rating agencies assign to such directors for purposes of their ratings methodology, to boost ESG ratings. Moreover, the Proposed Rule effectively eliminates the flexibility to select a board member based on a particular company's need, elevating climate-related expertise over other business considerations. In addition, the fact that climate-related expertise is subjective and not defined in the Proposed Rules, will create significant ambiguity for registrants with respect to how to comply with such disclosure and not

[3] *See* proposed 17 CFR § 229.1501(a)(1).

lend to the SEC's intended goal of consistent and comparable disclosures, as registrants are likely to define such expert based on their individual circumstances.

While we agree with the Commission that general information on governance, such as identification of the committee or committees responsible for addressing climate-related risks, may be relevant information for investors, we disagree with the level of detail called for by the Proposed Rules. We fear that an over-emphasis on climate-related risks could result in investors making ill-informed investment decisions as a consequence of such disclosures and have a detrimental impact on capital formation.

c. The Final Rules Should Avoid the Proposed Disclosure of Granular Information Related to Internal Risk Management for Climate, as This May Create a Misguided View That Climate Matters are More Important than Other Matters to the Company's Risk Management and Long-term Financial Success.

As a consequence of the granular disclosures for board and management oversight of climate-related risks, the Commission should consider whether the emphasis on these disclosures will be misleading to the average investor and deter capital formation. While the risks posed by climate change to our society are undoubtedly great and far reaching, climate-related risks are only one of many risks that boards and management face and should not be singled out as significant in light of other risks that may truly be significant or material to a registrant. An over-emphasis on this single risk in disclosure documents can mislead investors into thinking that climate change is a greater concern than it is currently or is expected to be over time. For example, many energy sector registrants already disclose risk factors regarding their vulnerability to transition risks associated with climate change in their Forms 10-K. However, most of these risks will likely not be borne for several years or possibly decades, if at all. Over emphasizing a long-term uncertainty could result in undue influence on investors' perceptions of certain sectors, particularly the energy sector, and deter capital formation, stifle competition, and reduce efficiency across the board. As well, prescribing disclosures that do not apprise investors of actionable risks arguably creates perverse incentives for management and the board to discuss climate-related risks simply so they can report that they did so (*i.e.*, the frequency disclosure requirement) and be possibly rewarded by proxy advisories as good climate stewards. This seems neither informative to investors nor a positive development for actual progress on climate change. Because of the overly prescriptive nature of the Proposed Rules, we believe that if enacted, they will do more to distort investors views of the material issues facing the disclosing registrant than they will provide investors' with actionable insights to manage their investments. Therefore, we encourage the SEC to consider revising the Proposed Rules to conform to a less-prescriptive approach and provide registrants the flexibility to disclose information only to the extent material.

d. The Final Rules Should Exclude the Extensive Proposed Disclosures for Registrant's Utilizing the Scenario Analysis.

The Proposed Rules would require extensive disclosure from any registrant that uses scenario analysis to assess the resilience of its business strategy to climate-related risks, including projected principal financial impacts under each scenario, and specifically (if vaguely) call for both

qualitative and quantitative disclosure.[4] This requirement raises concerns not only about revealing confidential, competitively sensitive information but also about the reliability of long-term financial forecasts suitable for public disclosure. Long-term plans and forecasts are inherently imprecise; they are laden with estimates and assumptions, and they are ever-changing as management's thinking evolves, because they are intended as internal tools for planning purposes. They are not intended for public disclosure, and they are not amenable to the kind of rigor required for public disclosure. As well, such a rule would likely deter companies who are not already conducting scenario analyses from doing so, and it may incentivize registrants who currently conduct scenario analyses to cease doing so.

Companies are already able to disclose near-term guidance based on detailed near-term forecasts, which they develop based on management's understanding of the company's current configuration, operating areas, operating performance, contracts and financing plans in light of near-term market dynamics and opportunities. Visibility into all of these factors (and therefore the bases for reasonable assumptions) declines precipitously as such a forecast stretches into the future. Reasonable assumptions sufficient to support a quantitative forward-looking disclosure become nearly impossible well before the 2050 horizon (used in a typical climate scenario analysis), which is why companies are generally reluctant to provide long-term quantitative guidance as part of their SEC filings. Preparation of quantitative disclosure for periods out to 2050 would consume a registrant's entire organization, and despite such efforts, the resulting disclosure would likely be meaningless, except that it will serve as a target for litigation and other forms of second-guessing.

We encourage the SEC to remove the requirement to disclose scenario analysis altogether and in any case to eliminate the requirement to include quantitative disclosure. Further, to the extent that the Final Rules retain some requirement to disclose scenario analysis, the SEC should narrow the requirement to avoid calling for disclosure of confidential and competitively sensitive information. Even assuming that the SEC reforms this Proposed Rule to omit the reference to "quantitative disclosure," the requirement to disclose scenario analysis should also be shifted to a point much later in the calendar year. The applicable scenarios (such as the IEA's Sustainable development Scenario) are not available until late in a given calendar year, after which companies need at least 9 months to review the scenario, perform their analysis, review with management and the board of directors, make adjustments as needed, and then prepare and obtain approvals for the disclosure.

e. The Commission Should Include the Corporate Governance Disclosures in the 400 Series of Regulation S-K Rather Than Item 1501.

The corporate governance disclosures of the Proposed Rules should be included in the 400 series of Regulation S-K rather than Item 1501.[5] Similar to other Item 407 disclosures, the Proposed Rules should be included in the registrant's proxy statement on Schedule 14A or

[4] *See* proposed 17 CFR § 229.1502.

[5] *Compare* proposed 17 CFR § 229.1501(a), (b) *with* 17 CFR § 229.407(h).

information statement on Schedule 14C, or in its Form 10-K. GPA Midstream and our members believe that the corporate governance disclosures regarding management and the board would be most informative to investors while reviewing other corporate governance disclosures when considering voting decisions.[6] The corporate governance disclosures in the Proposed Rules look to solicit similar information to Item 407(h), which requires disclosure of "the board's role in risk oversight of the registrant" including "how the board administers its oversight, and the effect that this has on the board's leadership structure."[7] By including this information with other similar governance disclosures, the Commission avoids overburdening investors with information and centralizes useful information in a single report. However, the Commission should be concerned with duplicating or overemphasizing climate-related oversight. Registrants should provide investors with a holistic picture of management and the board when making voting decisions, and as such, distorting their view with the over prevalence of one singular issue neither gives them more information while voting nor creates positive incentives for management and the board. Therefore, if the Commission decides to incorporate the corporate governance disclosures in the Proposed Rules into the Final Rules, it should place such disclosures in the 400 series of Regulation S-K and seek to minimize duplicative disclosure requirements.

2. The Final Rules Should Operate in Unison with Existing Emissions Reporting Practices Required by Other Federal Agencies.

a. The Lack of Continuity Between the Proposed Rules and EPA Reporting Requirements Would Be Burdensome for Registrants.

Many companies, including several GPA Midstream members, already gather and report extensive climate-related information under other existing regulatory requirements. In the Final Rules, we suggest that the Commission should avoid overlapping reporting requirements that would both duplicate and expand upon the requirements of the EPA's existing GHG emissions reporting program. Fundamentally, we believe that the SEC should defer to the agency designated by Congress to regulate emissions reporting—the EPA.

Specifically, at the federal level, the EPA's Greenhouse Gas Reporting Program ("GHGRP") requires reporting of certain GHG data and other relevant information from large GHG emission sources, fuel and industrial gas suppliers, and CO2 injection sites in the U.S. According to the EPA, the purpose of this requirement is to gather a comprehensive, nationwide emissions data set to provide the public with a better understanding of the sources of GHG emissions and to guide agency development of policies and programs. Under the GHGRP, approximately 8,000 facilities are required to report their annual emissions, resulting in 85-90% of total U.S. GHG emissions being covered and reported.[8] This includes facilities of GPA

[6] *See id*.

[7] *See id*.

[8] U.S. Environmental Protection Agency, Green House Gas Reporting Program and the U.S. Inventory of Greenhouse Gas Emissions and Sinks, (2022), available at https://www.epa.gov/ghgreporting/greenhouse-gas-reporting-program-and-us-inventory-greenhouse-gas-emissions-and-

Midstream members, as the GHGRP extends to onshore natural gas gathering and boosting, which includes the gathering pipelines and other equipment our members use to collect natural gas from onshore production wells and compress and transport the gas to a natural gas processing facility, transmission pipeline, or a distribution pipeline. The GHGRP also covers natural gas processing plants that separate natural gas liquids from produced natural gas. GPA Midstream believes that should the SEC adopt any reporting framework, it should act in unison with existing EPA emissions regulations, as this would minimize the costs associated with reporting to different forums, reduce inefficiencies related to compliance and avoid confusing investors.

The Proposed Rules would impose a separate emissions reporting obligation that differs from the process and scope required by the EPA program. While the Proposed Rules make light of this challenge by stating that such information needed to calculate Scopes 1 and 2 emissions is "reasonably available to registrants,"[9] some of our members would be disclosing Scopes 1 and 2 emissions for the first time and would need to create the necessary processes to track and control the data required for such disclosures. Beyond such practical concerns, we are also concerned that by the SEC setting its own standard for emissions disclosures, this could confuse investors with differing, and potentially inconsistent, data being made available.

Additionally, while the GHGRP does not require third-party verification, the EPA has included a data verification process, as the GHGRP provides verification of annual reports. Before submission, there are checks built into the Electronic Greenhouse Gas Reporting Tool ("e-GGRT")—the online tool used to report GHG data directly to the EPA so it can perform data validation. Reporters are also required to self-certify the data they submit to the EPA and, after submission, the EPA electronically verifies the data through the use of statistical, algorithm, range, and other verification checks. When needed, the EPA conducts direct follow-ups with facilities concerning potential data quality issues. The EPA's GHGRP program is also highly prescriptive, with robust information as to what data should be collected, how such data should be collected, which measurements to use to do so, and even how often the meters recording emissions should be calculated—all of which creates an inherently high degree of quality assurance before the validation process begins. Therefore, if reporting is required, we encourage the Commission to remove the requirement that accelerated and large accelerated filers would be subject to attestation requirements by third-party auditors, and instead align with, and rely on, the emissions verification process undertaken by the EPA, as this would reduce the costs and concerns with needing to verify emissions data under two separate and very different federal reporting regimes.

Further, registrants would undergo extreme difficulty in order to provide such information in their Forms 10-K by January or February of the following fiscal year, an issue that the EPA's GHG emissions reporting timeline inherently recognizes. The Proposed Rules reporting timeline substantially deviates from the EPA reporting timeline. To allow sufficient time to gather and process the necessary data, the EPA has required that companies provide their GHGRP reports for

sinks#:~:text=Some%20entire%20sectors%2C%20such%20as,total%20U.S.%20greenhouse%20gas%20emissions.

[9] Securities and Exchange Commission, The Enhancement and Standardization of Climate-Related Disclosures for Investors, Federal Registry Vol. 87 No. 69, 21334, 21377 (Apr. 11, 2022).

the previous calendar year by March 31 in the following year. This timeframe is necessary as much of the raw data is not finalized until mid-to-late January, and reporters then use that data to perform numerous calculations, run chemical process simulations, perform QA/QC, load the data to EPA, address any EPA validation messages, and submit the reports. Historically, the EPA has not even "opened" their reporting website until early-to-mid February. The EPA then completes its verification process before publishing the data in October. If finalized, the Proposed Rules would require registrants to undergo duplicative and additional burdens on an already time-consuming effort, which is not only unduly burdensome but may not even be possible given the huge amount of detailed work required to calculate and validate GHG emissions. The SEC's proposal should take advantage of the existing structure and work to harmonize any new requirements with the scope and timeline of existing EPA rules. GPA Midstream and our members believe the EPA's approach at least recognizes the inherent difficulties in calculating GHG emissions, and we encourage the Commission to consider following the EPA's lead on this issue.

Overall, the Proposed Rules would impose a separate reporting obligation that differs from the process and scope required by the EPA program. The Proposed Rules are far broader than the EPA program and could create the risk of confusion with different, and potentially inconsistent, data being made available to investors. Reporting to multiple forums could also increase compliance costs, as emissions calculations would vary between the multiple forums.

While the Proposed Rules acknowledge that the Commission opted not to conform the Proposed Rules to the process of the EPA, because "investors need and many investors currently use this information … to make voting decisions" and "that GHG emissions information serves as the starting point for transition risks analysis because it is quantifiable and comparable across companies and industries," we believe that this could still be achieved by requiring registrants with multiple reporting facilities to aggregate their current emissions disclosures to the EPA.[10] Given the broad coverage of most GHG emissions under the GHGRP, investors would still be appraised of the risk for purposes of voting decisions—as the need to report would be triggered based on the volume of emissions, thus capturing the largest emitters—and while some registrants may inevitably fall through the cracks, in light of the alternatives and externalities, this approach would be a relatively small concession by the Commission in light of the extreme costs the Proposed Rules would impose on registrants.

In sum, the SEC should take advantage of the existing structure and work to harmonize any new requirements with the scope and timeline of existing EPA rules. Accordingly, if reporting is required, GPA Midstream requests that the Proposed Rules be revised to: (i) conform any emissions disclosure requirements to that of the EPA's GHGRP; and (ii) align reporting deadlines with the EPA GHGRP to account for the time and effort necessary to ensure proper reporting of accurate emissions data.

b. The Final Rules Should Provide for any Required Emissions Data to be in Form SD.

[10] *See id*. at 21376.

To the extent the SEC retains a requirement for registrants to disclose GHG emissions, such disclosures should not appear in the Form 10-K, Form 10-Q or other current or periodic reports. Emissions data is not analogous to financial information in that it lacks the defined standards and precisions of measurement that accompany current financial reporting. Emissions data is of a different character as explained throughout this letter. The SEC has already designated Form SD as the repository for nontraditional "special disclosure." Thus, Form SD could be expanded to include any mandated GHG emissions disclosures. Among the many benefits of doing so is that it will signal to investors that the disclosure is of a different tenor than traditional information that has long been required under the federal securities laws, which will work to mitigate the potential for investor confusion and be consistent with the SEC's mandate of promoting efficient markets and robust capital formation.

c. The Proposal should not require registrants to follow the GHG Protocol.

The Proposed Rules specifically ask for comment on whether or not the SEC should require a registrant to use a particular methodology for determining GHG emission metrics, such as the GHG Protocol.[11] The GHG Protocol is currently in draft form and still in the process of being fully developed. The Commission should allow registrants flexibility to choose a GHG framework appropriate to their operations, business and industry. Further, the Proposed Rules rely heavily on terminology from the GHG Protocol draft, which is an evolving document that is subject to change, introducing potential uncertainty and undermining standardization efforts by the Commission.

d. The Proposed Rules Should Maintain Fidelity with the EPA GHG Verification Requirement.

Under the Proposed Rules, accelerated filers or large accelerated filers that are required to disclose Scopes 1 and 2 emissions under Proposed Item 1504 must include an attestation report covering such disclosure in the relevant filing.[12] In the Final Rules, the Commission should remove the attestation requirement for Scopes 1 and 2 emissions disclosures because it would be too costly and provide little benefit in terms of reliability.

As previously mentioned, many GPA Midstream members already have robust systems in place to collect and provide information to regulators, including to the EPA, which itself already has a verification process. This current EPA verification process already provides a level of reliability and comparability among reporters within industry specific segments. Additional third-party attestation would cause our members to incur significant additional costs without a comparable benefit. Alternatively, we recommend that the Commission align any GHG emissions disclosure process with that of the EPA to avoid duplicative reporting requirements across federal agencies. In particular, GPA Midstream recommends that if disclosure is required the SEC should accept the verification process and resulting data from the EPA's GHGRP for purposes of the emissions disclosures. This would minimize the costs of compliance on registrants by alleviating

[11] Securities and Exchange Commission, The Enhancement and Standardization of Climate-Related Disclosures for Investors, Federal Registry Vol. 87 No. 69, 21334, 21388 (Apr. 11, 2022).

[12] *See* proposed 17 CFR § 229.1505(a).

much of the costs of having to report to separate forums. Even if registrants have to send the same information to two different agencies, this is a minor cost compared to reporting under two different regulatory frameworks that have separate reporting requirements and verification methods.

e. GPA Midstream Would Urge the SEC to Limit Scope 3 Emissions Reporting to Voluntary Reporting.

Under the Proposed Rules, most registrants would have to disclose separately their total Scope 3 emissions for the fiscal year if those emissions are material or if the registrant has previously set a GHG reduction target or goal that includes Scope 3 emissions.[13] Scope 3 emissions are the emissions from upstream and downstream activities in a company's value chain.[14] As discussed, requiring disclosures up and down the "value chain" would impose a substantial new regulatory burden – one that presents substantial challenges. GPA Midstream recommends that, if disclosure is required, the Commission not require Scope 3 emissions disclosures—*i.e.*, Item 1504(c)—in the Final Rules. If adopted, the proposal is already a sea of change in reporting requirements, even without Scope 3 emissions disclosures. The SEC should allow any Final Rules to be implemented, provide registrants time to adjust to any new requirements, and then reassess whether Scope 3 emissions need to be included in a future rulemaking.

No federal regulation or agency currently requires disclosure of Scope 3 emissions, nor do we recommend our members disclose Scope 3 emissions in our Energy Infrastructure Counsel/GPA Midstream ESG Reporting Template. As a consequence of the Proposed Rules, many of our members will be asked for the first time, under threat of penalty by the SEC, to disclose Scope 3 emissions within their respective value chains. Our concerns include the substantial cost of compliance, the large impact on members' operations, and the extreme difficulty in gathering the information necessary to report Scope 3. Practical difficulties with respect to collecting Scope 3 emissions data also call for a phased-in approach to reporting to the extent any Final Rule requires disclosure of such emissions. Obtaining emissions data from upstream and downstream sources within a value chain will be a painstaking and lengthy exercise. Existing contractual provisions are unlikely to provide an existing right for registrants to obtain this data from their suppliers and customers. Many of the parties in the value chain for our members are small, family-owned businesses that do not have the capabilities to provide our members the information needed to determine Scope 3 emissions. Moreover, not all of the sources within the value chain will necessarily have the sophistication to ensure accuracy in reporting even if they are tracking emissions data. This risks forcing registrants to rely on inaccurate data or use emissions factors which are unreliable, which could distort a registrant's true Scope 3 emissions data. This distortion will frustrate one of the goals of the Proposed Rule to provide investors with accurate and comparable data to inform decision-making. Thus, the SEC should not mandate the disclosure of data of questionable value and accuracy.

[13] *See* proposed 17 CFR § 229.1504(c).

[14] See proposed 17 CFR § 229.1500(r).

If adopted, the SEC will be requiring that our members report to a greater and more granular degree than the EPA requires, and to do so in a novel area of evolving calculations and methodologies, which the Proposed Rules acknowledge is the case with Scope 3 emissions.[15] The Proposed Rules would require registrants to double-and multiple-count risks and report on a significant number of factors outside their control. Even asking registrants to simply delineate what constitutes their "value chain" for purposes of Scope 3 emissions is an enormous, enterprise-wide undertaking that will involve costly consultation with outsider advisors and expend a considerable amount of resources for information that will likely be of limited utility due to its inherent unreliability. Adding Scope 3 emissions in the Final Rules will not help investors better understand the risks facing our members, but it will likely overburden investors with superfluous climate-related information, and possibly erode access to capital for some of our members and be an impediment for both market efficiency and capital formation.

As well, the Proposed Rule's safe harbor is overly narrow for the disclosure of such an unsettled area. Registrants should not suffer from increased liability because the SEC mandates the disclosure of inherently uncertain data. Accordingly, any Final Rule that requires the disclosure of Scope 3 emissions should include additional safeguards to protect registrants from liability, such as deeming any Scope 3 emissions data to be furnished rather than filed or making it clear that meeting the Proposed Rule's good faith standard does not require clearing an impractically high bar (*i.e.*, reliance on a reasonable third party source, whether a consultant, information from government agencies, or methodologies published by trade groups and nongovernmental organizations, demonstrates "good faith").

Further, a single hydrocarbon molecule will pass through many operations (and likely, companies) along the oil and gas value chain as the molecule moves from the wellhead and production operations to gathering and boosting, natural gas processing, storage, transmission, distribution, and/or NGL fractionation. Under the Proposed Rules, each company would be reporting Scope 3 emissions for the *same* molecule. Setting aside the significant, if not impossible, task of determining exactly how each molecule of hydrocarbon that passes through our midstream operations is ultimately used, we question the utility and value to investors of all the companies on the value chain reporting. For example, natural gas can be a fuel or a feedstock for ammonia, propane can be a petrochemical feedstock for ethylene, propylene, used as fuel, exported (and thus used in a variety of different ways)—each of which would be calculated differently for purposes of Scope 3 emissions. Moreover, NGLs may trade hands multiple times (often 5 to 15 times) from the time it is produced at a fractionation facility until it is ultimately delivered to a consumer, all of which would presumably need to be recorded for purposes of Scope 3 emissions. We are also concerned that such information will lead to incorrect interpretation of industry-wide Scope 3 data, since every company on the value chain will be reporting the theoretical emissions of the same molecule, and thus reported Scope 3 emissions will be multiple times larger than any "real world" emissions.

[15] Securities and Exchange Commission, The Enhancement and Standardization of Climate-Related Disclosures for Investors, Federal Registry Vol. 87 No. 69, 21334, 21377 (Apr. 11, 2022). ("We recognize that the methodologies pertaining to the measurement of GHG emissions, particularly Scope 3 emissions, are evolving.").

Further, if the Scope 3 emissions disclosure requirement is retained in any Final Rule, the SEC should clarify and confirm that upstream and downstream emissions should not be in a midstream company's Scope 3 emissions, as midstream entities often do not take title to the products they transport under their service agreements. The Proposed Rule states that the SEC should base "[its] proposed GHG emissions disclosure requirement primarily on the GHG Protocol's concept of scopes and related methodology."[16] Under the GHG Protocol, a company's Scope 3 emissions would include emissions attributable to the "[u]se of sold products."[17] Similarly, the Proposed Rule defines Scope 3 to include "[t]ransportation and distribution of a registrant's sold products, goods or other outputs;" and "[u]se by a third party of a registrant's sold products."[18] While we believe that this would not require midstream companies to report emissions for the products they transport but do not sell (nor take title to), and that such a position aligns with the GHG Protocol, we nonetheless believe that this potential ambiguity warrants further clarification by the Commission.

As illustrated above, the natural gas transported by midstream interstate natural gas pipeline companies is not a "product." Instead, the relevant "product" is the transportation service itself, rather than the underlying commodity. Neither the GHG emissions created from upstream production of the gas nor the GHG emissions created from downstream combustion of the gas are within the Scope 3 emissions of GPA Midstream members. If the Commission finalizes the Proposed Rule and includes a requirement to disclose "material" Scope 3 emissions, the Commission should clarify that, regardless of what types of Scope 3 reporting might be required with respect to "product manufacturers," registrants that transport products, such as midstream companies, should not be required to include emissions attributable to the upstream production or downstream combustion of natural gas in their Scope 3 emissions. The Commission could achieve this by simply clarifying that emissions from commodities in which the transporter does not take title (*i.e.*, when the company is merely providing a transportation service) shall not be included for purposes of Scope 3 emissions reporting.

Therefore, if Scope 3 emissions are covered at all, GPA Midstream recommends that the SEC limit any Scope 3 emissions disclosure to only voluntary disclosures or those companies that have publicly set Scope 3 targets or goals. This would still improve the quality of Scope 3 emissions disclosures, protecting the investing public without forcing virtually the entire energy sector to disclose Scope 3 emissions. If the Commission nevertheless requires the disclosure of Scope 3 emissions, we recommend that any requirement:

- include a more robust safe harbor protections or deem such disclosures furnished not filed;

[16] *Id*. at 21345.

[17] Greenhouse Gas Protocol, *Corporate Value Chain (Scope 3) Accounting and Reporting Standard*, at 49 (2011), https://bit.ly/3w3cXyi (emphasis added) ("GHG Protocol").

[18] Proposed 17 CFR § 229.1500(r).

- clarify for purposes of the Final Rules that registrants are not responsible for reporting Scope 3 emissions to products in which they do not take title;

- have a phased-in approach to implementation, requiring Scope 3 emissions to be disclosed starting in fiscal year 2027; and

- allow registrants to make a determination of which categories of emissions within their value chain are material, and only require such disclosure as part of their Scope 3 emissions.

3. The SEC Should Permit Registrants to Use the Operational Control Approach for Purposes of Reporting GHG Emissions for Joint Ventures.

GPA Midstream and our members are concerned with the application of the equity method of accounting to the Scope 1 and Scope 2 GHG emissions disclosures. The Proposed Rules state that "a registrant that applies the equity method to an investee, the percentage of ownership interest used to record its share of earnings or losses in the investee must be the same for measuring its share of GHG emissions by the equity method investee."[19] Our members are likely to face significant challenges in collecting and gathering the appropriate GHG emissions data from such equity investees for a number of reasons, including that the incentives between the parties are not aligned and due to the limitations of existing contractual arrangements. Many of these equity investees are private companies that currently do not, and have very little incentives to, monitor and track GHG emissions data as they are neither responsible for reporting such data to the public, nor is it in their economic interest to do so, as developing appropriate controls would be expensive and take considerable effort. In other instances, the arrangements are between two public companies that may have differing views and processes on how they track emissions data, which would introduce considerable variance, thus undermining the Commission's goal of promoting standardization.

Further, the arrangements that result in such equity method accounting are often governed by joint venture agreements. In such situations, the operator in the agreement can be a private company, and thus not subject to SEC rules whereas the registrant often serves as the non-operator. In practice, this means that the non-operators are contractually limited by the joint venture agreement to certain rights and obligations, which few, if any, include rights to GHG emissions data of the operator. In addition to limited non-operator's rights to GHG data under the joint venture agreements, a non-operator would have no understanding of how the data was gathered, no way to verify it, and no way under the current joint venture agreement to compel such data as many of these agreements have been in place for decades. We believe this further supports our position that the SEC should instead adopt the EPA's GHGRP, as the GHGRP is based on operational control and does not require non-operators to report GHG emissions beyond their operational control. Furthermore, these joint venture agreements in the midstream industry are

[19] Securities and Exchange Commission, The Enhancement and Standardization of Climate-Related Disclosures for Investors, Federal Registry Vol. 87 No. 69, 21334, 21385 (Apr. 11, 2022).

customized documents that are typically subject to extensive negotiation and therefore would need to be renegotiated to include GHG emissions data disclosures, expending time and resources. Moreover, these agreements typically do not allow the non-operator a unilateral right to amend the agreement. In practice, non-operator registrants will be unable to unilaterally force the operator to disclose or intervene (to track this information itself) without an amendment to the joint venture or other similar agreement. Thus, even assuming our members can convince their private sector partners to amend such agreements and/or develop the infrastructure necessary to track such data, it will cost a significant amount of resources and add unnecessary complexity to existing relationships with private company partners. Even in those cases where the arrangements are between two public companies, the arrangements may provide for the reporting of such data to counterparties, but that may not always be the case.

Therefore, we recommend that any reporting of GHG emissions required by the Proposed Rules allow for reporting based on operational control, as this would provide our members with greater flexibility and reflect the actual contractual relationship between our members and their joint venture partners. More importantly, assets subject to the operational control of a registrant are the assets for which registrants will not only have the ability to calculate emissions, but also the ability reduce emissions. The equity-method approach overemphasizes reporting fractional emissions over providing meaningful data for identifying areas where action can be taken to reduce emissions and correspondingly mitigate climate-related risks.

4. In Any Final Rule, the SEC Should Apply the Traditional Materiality Standard Throughout the Rule.

a. The Commission Should Remove the Expansive "Value-Chain" Concept When Defining Climate Risks, As It Is Vague, Would Be Unworkable, and Departs from Historical Disclosure Standards.

In fashioning any Final Rule, the SEC should remove the expansive "value chain" concept, which departs from historical SEC standards, is overly vague and would impose enormous and impractical burdens for registrants. Instead, if adopted, the scope of risks considered by a Final Rule should be practical and reasonable, hewing closely to the traditional materiality standard.

Under the Proposed Rules, registrants would be required to describe "climate-related risks" that are reasonably likely to have a material impact on the registrant's business or consolidated financial statements as manifested over the short, medium, and long term. As proposed, "climate-related risks" would mean 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.[20] By defining climate-related risks (and climate-related opportunities) to include actual or potential negative impacts of climate-related conditions and events on a registrant's value chains, the Proposed Rules require an issuer to assess its climate exposure well beyond its own operations, which departs from the long-established historical disclosure standards under

[20] *See* proposed 17 CFR 229.1500(c).

Regulation S-K. This departure is most evident in the proposed definition of "value chain," which would include the upstream and downstream activities related to a registrant's operations, including "supplier activities" and even potentially—due to a lack of clarification in the Proposed Rules—consumers or customers, extending far beyond the direct activities of the registrant.[21] Further, the Proposed Rules rely heavily on terminology from the GHG Protocol draft, which is an evolving document that is subject to change, introducing potential uncertainty and undermining standardization efforts by the Commission.

We ask the SEC to reconsider this approach. For one, the SEC's proposal is vague, unworkable, unduly costly and burdensome. The proposal defines "value chain" vaguely, extending upstream to "supplier activities" without clear limitation and extends to an ill-defined downstream scope. At a minimum, it appears to extend well beyond a registrant's core business, and we would urge the Commission to reconsider whether it is reasonable to require registrants to attempt to assess risks that are far outside their ability to reasonably assess. For example, the midstream sector receives natural gas from multiple producers – produces NGLs that are integrated into a wide range of uses across the economy (such as plastics) – and delivers natural gas further downstream. For one entity to undertake to assess what the potential risks are associated with its contribution to those multiple elements across the "value chain," let alone the final consumer, would be an extraordinary, if not impossible, task.

At a minimum, this extraordinarily expansive definition of "climate-related risks" would force registrants to expend substantial resources in an attempt to both identify and monitor risks throughout their value chain as the Proposed Rules require information beyond the dominion of registrants. Registrants cannot fully know these issues up and down their value chain, and thus they would need to hire qualified individuals and/or engineering/consulting firms that can undertake this risk identification, as well as other reporting functions mandated by the Proposed Rules. This is already a challenging task, which will be amplified by the fact that all SEC registrants will be battling over the same resources that are already strained by a tight labor market. Further, given the unrealistic scope advanced by extending this to the "value chain," even beyond the burden, we expect such disclosures will only elicit generic statements with assumptions and caveats that would do more to confuse than inform investors.

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.[22] This forces 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 highly integrated supply chains—*i.e.*, those that lack the vertical scale of other companies—the Proposed Rules would lead to substantially increased compliance costs that would likely not benefit investors.

[21] *See* proposed 17 CFR 229.1500(t).

[22] *See* proposed 17 CFR 229.1500(b), (c), (t).

b. Despite the General Statement in the Proposal, Many Aspects of the Proposed Rules Lack a Materiality Qualifier and Any Final Rule Should Adjust This Approach.

Similarly, the Commission should apply the materiality standard uniformly across any Final Rules it chooses to adopt. The proposal makes the general statement that it will adhere to the traditional materiality standard, which commenters like GPA Midstream urged in the pre-notice comment process. Unfortunately, many of the required disclosures under the Proposed Rules are not conditioned on a materiality qualifier. We urge the SEC to correct that flaw.

For example, governance disclosures, Scope 1 and Scope 2 emissions, one of the two standards for requiring Scope 3 emissions (*i.e.*, if the company has set a GHG emissions target that includes Scope 3 emissions), targets and scenario planning, and the financial statement metrics under the proposed amendment to Regulation S-X (further discussed below), all lack a materiality qualifier.[23] While requiring disclosures that are not qualified by a materiality standard is not unprecedented,[24] the sheer number of unqualified disclosures—without a Congressional mandate—certainly is, and the costs that this will impose on registrants are likewise unprecedented, and offers no demonstrable benefit to investors. This runs counter to usual SEC practice. The Proposed Rules contradict the principal that material information should not be obscured by excessive, immaterial details.[25] The Commission has repeatedly emphasized the importance of prioritizing disclosures that are material and will further an understanding of a company's business, operations and financial condition. For example, in the SEC's 2003 MD&A release, the Commission clarified that "companies should focus on material information and eliminate immaterial information that does not promote understanding of companies' financial condition, liquidity and capital resources, changes in financial condition and results of operations."[26] Further, in the SEC's most recent Regulation S-K release, the SEC further emphasized the importance of registrants not including generic risk factors and instructed registrants to focus on disclosures that offer insights into opportunities, challenges, and risks, such as those presented by known material trends and uncertainties.[27] GPA Midstream requests that the Commission recognize the importance of material information in fashioning the Final Rules to ensure that investors receive actionable information that is material to the registrant's financial outlook, rather than be buried in granular and immaterial disclosures that are not meaningful.

[23] *See*, *e.g.*, proposed 17 CFR § 229.1501(a), (b); proposed 17 CFR 229.1504; proposed 17 CFR § 229.1505; proposed 17 CFR § 229.1506; and proposed 17 CFR § 210.14-01,-02.

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

[25] *TSC Industries, Inc. v. Northway, Inc.*, 426 U. S. 438, 448-449 (1977).

[26] *See* Securities and Exchange Commission, Modernization of Regulation S-K Items 101, 103, and 105, Release Nos. 33-10825; 34-89670; File No. S7-11-19, (Aug. 29, 2020), available at https://www.sec.gov/rules/final/2020/33-10825.pdf.

[27] *See* Securities and Exchange Commission, Interpretation: Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations, Release Nos. 33-8350; 34-48960; FR-72 (Dec. 19, 2003), available at https://www.sec.gov/rules/interp/33-8350.htm.

c. The Final Rules Should Include—at the very least—A Materiality Qualifier for the Proposed Amendments to Regulation S-X.

The Final Rule should include a materiality qualifier for the proposed revisions to Regulation S-X. The Proposed Article 14 to Regulation S-X deviates substantially from a traditional materiality threshold and elevates the novel and vaguely defined concept of "climate-related impacts" over all other factors that may influence financial performance. For example, under Proposed Rule 14a-02(b) (amendment to Regulation S-X),[28] registrants would be required to disclose existing financial statement line items to the extent the aggregate climate-related impact metrics (or expenditure cost metrics) exceed 1% or more of the particular line item in a given year. This is significantly below the typical "initial step"/per se rule of thumb of 5% used by some registrants/auditors in assessing materiality per the SEC staff's own logic in Staff Accounting Bulletin No. 99 ("SAB No. 99").[29] While the Commission openly acknowledges that a purely quantitative threshold is not conclusive, as auditors need to consider all relevant circumstances, setting the threshold at 1% is very low by any normative standard and not dispositive for purposes of a registrant's materiality determination.[30]

As the Commission makes clear in SAB No. 99, registrants should avoid the use of threshold bright lines for the purpose of its materiality determination, as the staff instructs auditors to "consider all the relevant circumstances."[31] However, under the Proposed Rules, registrants have no ability to consider all relevant circumstances as they must disclose once the registrant triggers the threshold, irrespective of the circumstance of the registrant, running counter to the Commission's own guidance. Absent a materiality qualifier, registrants and their auditors will not be able to assess the materiality and will instead be forced to disclose once the threshold is triggered, whether it is material or not. This would create a situation where investors are burdened by non-material information, which could distort an investor's assessment of the registrant's climate-related risks.

Such a concern becomes particularly problematic in light of the 1% threshold applying on both a gross and aggregate basis.[32] For example, if a registrant's facility was damaged in a severe weather event, insurance would protect the registrant from losses, but regardless, the disclosure would be triggered by the gross amount, not the net amount, which would account for mitigating factors such as insurance. Further, the 1% threshold may be easier to reach than one would expect, as the calculation includes the gross amount from all climate-related impacts. The disclosure of these figures, absent a materiality determination, may mislead investors into thinking climate-

[28] *See* proposed 17 CFR § 210.14-02(b). Note: Unlike the Reg. S-K disclosure requirements for GHG emissions, the Reg. S-X disclosure proposals do not contain an exemption for information that is not reasonably available with respect to historical periods.

[29] *See* Securities and Exchange Commission, SEC Staff Accounting Bulletin: No. 99 – Materiality, Release No. SAB 99 (Aug. 12, 1999), available at https://www.sec.gov/interps/account/sab99.htm.

[30] *See id*.

[31] *See id*.

[32] *See* proposed 17 CFR § 210.14-02(b).

related impacts are more impactful to the registrant's operations than they truly are. This distorted view, mandated by the disclosure, would only serve to confuse investors and could lead them to incorrect conclusions about the registrant's true underlying exposure to climate-related risks and the associate financial impacts.

The Proposed Rules also appear to indicate that impacts on a registrant's suppliers or third parties, to the extent they are affected by climate events or face significant transition costs in moving to reduce their carbon footprint, would need to be calculated and included in the financial metrics.[33] The Proposed Rules define "transition risks" as the actual or potential negative impacts on a registrant's consolidated financial statements, business operations, or value chains attributable to regulatory, technological, and market changes to address the mitigation of, or adaptation to, climate-related risks. Putting aside the challenge of discerning what constitutes a cost arising from a transition risk (versus say, a facility modernization or adaptation due to changing consumer preferences not directly correlated with climate change), requiring registrants to both collect and model data concerning the impact of climate-related events on a third party's activities would be an uncertain and expensive undertaking. As a purely practical matter, registrants would need to assess the impact of climate-related risks on a supplier's pricing, for example, which likely could not be determined reliably in light of other factors that impact pricing, such as inflation, geopolitical events, non-climate-related regulations, competition, demand, etc., all of which would not necessarily be known by the registrant and would require substantial and uncertain predictions of future events. On top of that, even gathering the hard data would be challenging, as, for example, a third party might not be willing to disclose such information to the registrant for competitive purposes.

Likewise, requiring registrants to disclose the financial impact of climate-related severe weather events presupposes that registrants can reasonably discern that a weather event was caused by climate change. Such a contention misunderstands the relationship between climate change and severe weather. Climate change increases the risk of severe weather, however, determining whether individual severe weather events, in isolation, are caused by climate change is an impossible endeavor. This would ultimately cause registrants to disclose the impact of every severe weather event, irrespective of whether such event was actually climate-related, which undermines the Commission's goal of providing investors with decision-useful information.

Further, no other financial reporting standards currently require a registrant to conduct such an extraordinary analysis. Because the disclosure threshold is not predicated on materiality, registrants like GPA Midstream members will be required to make these disclosures—which may or may not be material—inclusive of major assumptions, which would expose our members to greater risk of legal liability without enhancing the reliability of the information for the investing public. Furthermore, requiring issuers to analyze and factor into their financial reporting such third party data is highly impracticable.

[33] *See* proposed 17 CFR § 210.14-02(d)(2).

Therefore, we urge the SEC to reconsider this approach, but at a minimum, GPA Midstream urges the Commission to adopt a materiality qualifier for all climate-related financial metric disclosures for any Final Rules under the proposed amendment to Article 14 of Regulation S-X. To the extent the SEC retains any disclosures on financial impacts in the Final Rules, we also request the SEC to consider moving such disclosures to Regulation S-K, for example the Management's Discussion and Analysis section, where they would be subject to traditional principles of materiality.

5. The SEC Should Reconsider the Level of Detail Demanded by Some of the Proposed Rules, Particularly the Disclosure of "Physical Risks" Which Would Impose Enormous Compliance Costs on Registrants While Providing Little Value to Investors.

Under the Proposed Rules, registrants would be required to provide detailed disclosure of material "physical risks," including both acute and chronic risks to a registrant's business operations *or the operations of those with whom it does business.* Because of the granular information that is required to comply with these disclosures, this is another aspect of the proposal that would incur significant compliance costs monitoring and tracking such risks. Moreover, given the scope of the operations with whom our members do business, it seems inefficient and resource intensive for our public company member's to assess all of the physical risks to those in which they do business. Assessing the materiality of potential physical risks affecting the operations of those with which our members do business will require substantial resources, time and new employees. This level of monitoring day-to-day operations of not only registrants but also all companies with whom they do business is inappropriate both for the burdens it would impose on public companies and for its apparent attempt to burden non-public companies who have not submitted to SEC oversight.

Further, in instances where a registrant deems a physical risk to its own operations material, the registrant would be required to provide the ZIP code for the location or, if the location is in a jurisdiction that does not use ZIP codes, a similar subnational postal zone or geographic location.[34] If flooding presents a material physical risk, the registrant would be required to disclose the percentage of buildings, plants, or properties (square meters or acres) that are located in flood hazard areas in addition to their location.[35] If the registrant's assets are located in regions of high or extremely high water stress that presents a material risk, the registrant would be required to disclose the amount of assets (*e.g.*, book value and as a percentage of total assets) located in such regions in addition to their location. The registrant would also be required to disclose the percentage of its total water usage from water withdrawn in such regions.[36]

[34] *See* proposed 17 CFR § 229.1500(k).

[35] *See* proposed 17 CFR § 229.1502(a)(1)(i)(A).

[36] *See* proposed 17 CFR § 229.1502(a)(1)(i)(B).

The lack of clarity in the Proposed Rules—such as failing to define "extremely high water stress"—along with the level of granularity will cost significant and disproportionate time and resources in order to comply. Registrants will be required to update the calculation comparing the book value of the assets as percentage of total assets annually, as well as provide disclosures—down to the square meters—for assets located in (presumably) flood plains. To comply with these requirements, registrants will need to create compliance programs that include these SEC requirements, which will expend resources and divert the registrant's attention from other risks. Further, these programs and their calculations will need to be internally and externally verified to minimize liability, and protect the registrant, all of which is resource intensive.

The level of granularity called for by the Proposed Rules risks will overwhelm investors with information that will not lead to informed decision-making and will potentially harm access to capital for our members. Re-locating assets to areas exposed to lower degrees of weather, flood and water stress risks is often impracticable given the potential capital investment involved. Moreover, these assets may be protected from the risks the SEC identifies either through physical hardening or other resiliency measures, insurance products, or other contractual protections. Mere disclosure of the location of assets exposed to these risks could confuse investors and lead them to make divestment decisions that are not fully informed, harming capital formation. Registrants should not face a situation of having to engage in a lengthy and burdensome exercise of disclosing at-risk assets and a similarly lengthy discussion of their risk management practices, in their security filings. Material financial impacts from severe weather events are already required to be reported under existing SEC rules. Overloading investors with the type of information called for by the Proposed Rule neither serves the interests of registrants nor investors and is unreasonable.

GPA Midstream and our members support the disclosure of material climate-related risks, however, we encourage the Commission to recognize that the existing disclosure framework already requires the disclosure of material climate-related information and paint in any Final Rule requirements with a broader brush that allow companies the flexibility to disclose the information that is material in a way that best informs investors about the material risks to their particular operations. By prescribing formulaic and rigid requirements, the Commission would be inundating and confusing investors rather than providing them with more concise, high-quality disclosures.

6. The Proposed Rules Should Base All Disclosure Requirements on a "Furnished" Rather Than "Filed" Standard.

Under the Proposed Rules, absent a few narrow exceptions for Foreign Private Issuers, all disclosures are "filed" rather than "furnished."[37] 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

[37] Securities and Exchange Commission, The Enhancement and Standardization of Climate-Related Disclosures for Investors, Federal Registry Vol. 87 No. 69, 21334, 21411 (Apr. 11, 2022).

Section 18 of the Exchange Act, as plaintiffs would not have to prove scienter or negligence, as compared to Rule 10b-5 claims. The heightened risk of litigation for securities law-based claims will result in higher insurance costs for public companies. These higher costs will (1) reduce adversely impact the ability of registrants to deliver long-term value to shareholders, thereby making public companies less efficient, (2) make public companies less competitive with private companies that do not incur the higher insurance cost, including directors and officer's liability insurance, and (3) accordingly deter private companies from seeking capital formation in U.S. capital markets. While the Commission acknowledges that the existing safe harbors for forward-looking statements under the federal securities laws would be available for aspects of the proposed disclosures, many of the proposed new disclosures are historical in nature and such safe harbors will not apply. As outlined above, registrants will face a number of challenges and burdens in compiling these disclosures, many of which will be subject to assumptions, uncertainty and variability. We believe 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.

GPA Midstream members strongly encourage the Commission to consider making ***all*** climate-related disclosures in the Final Rules as "furnished" rather than "filed," as such treatment would be more appropriate for these types of variable and uncertain disclosures.

7. Legal Challenges to the Proposed Rules.

In addition to the concerns with the specifics of the proposal, we dispute that the SEC has the legal authority to create a climate-related disclosure rule of this magnitude. For one, requiring this type of expansive disclosure is contrary to the compelled-speech doctrine. Many companies including several GPA Midstream members now publish sustainability reports and are voluntarily trying to be responsive to ESG ratings companies, investor advisory groups and institutions who request climate-related disclosures. However, it is entirely different when the SEC seeks to compel such speech in the form of SEC disclosures by regulation. Second, the Proposed Rules run contrary to the major questions doctrine. Given the magnitude of the SEC's proposal that cuts across every aspect of the U.S. economy–and beyond–this is a matter for the Congress to act or direct the SEC to act, before embarking on this rulemaking. Further and along the same lines, the Commission's existing statutory authority is not sufficient to require the detailed disclosure of climate-related metrics, particularly the requirements under Section 13(a) of the Exchange Act.[38] In addition, as required under Section 3(f) of the Exchange Act, we fail to see how the action will promote efficiency, competition, and capital formation, as many features of the current Proposed Rules undermine, rather than promote, each of the foregoing. Finally, the SEC should consider the impact the Proposed Rules would have on competition as required under Section 23(a)(2) of the Exchange Act, and whether the Proposed Rules would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Applying these and other legal principles, it is plain that this mandatory climate-related disclosure rule exceeds the Commission's legal authority and thus we urge the Commission not to finalize the Proposed Rules.

[38] *See generally* 15 U.S. Code § 78m(a).

* * * * *

GPA Midstream appreciates the opportunity to provide comments on the Proposed Rules and would be happy to provide you with further information to the extent you would find it useful. If you have any questions regarding this letter, please contact Matt Hite at mhite@gpamidstream.org or (202) 279-1664.

Respectfully submitted,

Matt Hite
Vice President of Government Affairs
GPA Midstream Association