June 14, 2022

Chair Gary Gensler
U.S. Securities Exchange Commission
100 F Street NE
Washington, DC 20549

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

Dear Chair Gensler and Secretary Countryman:

On behalf of Kimmeridge, we welcome the opportunity to respond to the Securities and Exchange Commission's ("SEC") request for public comment on the Proposed Rule on Enhancement and Standardization of Climate-Related Disclosures for Investors (the "Rule").

## Company Background

Founded in 2012, Kimmeridge is an alternative asset firm focused exclusively on the energy sector. In March 2022, we partnered with Forest Carbon Works to create Chestnut, an investment firm that provides a scalable, low-cost approach to carbon abatement through offering high-quality, nature-based carbon offsets. Through our offsetting practices, we aim to reforest 500,000 acres of land throughout the United States by 2030. Additionally, in 2021, Kimmeridge announced the creation of Civitas, a merger of three independent Colorado exploration and production companies. Civitas is Colorado's first carbon neutral energy producer and is relentlessly committed to driving down emissions that would normally be associated with the oil and gas development process and then offsetting residual Scope 1 emissions using only certified offsets sourced from the four largest and most credible offset registries. Civitas also offsets Scope 2 emissions through green-e certified renewable energy credits. As a company that is committed to advancing ESG across the oil and gas sector, Kimmeridge is keenly interested in seeing greater disclosure of climate and emissions data as it relates to business practices.

## Comments

On the whole, we believe the Rule will drive the creation of decision useful data for investors by providing information that will allow investors to better allocate capital. Requiring disclosure of use of carbon offset, as the Rule does, will lead to more efficient markets, better facilitation of capital formation, and a higher degree of investor protection for companies such as ours that rely on the market differentiating high-quality credits from low-quality junk offsets that do not appreciably reduce emissions.

However, we believe the requirement for certain companies to disclose Scope 3 emissions is detrimental to the overall spirit and purpose of the Rule to provide decision useful information to investors relating to climate risks. As described in more detail below, our primary concerns with the mandatory disclosure of Scope 3 emissions for certain issuers arise from:

a. The unreliability of the data;

b. The potential for double counting; and

c. The cost (and risk) associated with compliance.

These three areas present high barriers to compliance with the Rule as written. Therefore, we recommend that the Commission take a mass-balance approach to calculating emissions while making Scope 3 disclosures optional for all issuers.

## The Proposed Disclosure Requirements for Carbon Offset Will Guide Investment Decisions as More Companies Pledge "Net-Zero" Emissions

While we agree that companies must work to abate their emissions where possible, we know that economy wide decarbonization will not happen overnight. We are encouraged to see the inclusion of disclosure requirements for the use of carbon offsets in the Rule, as these disclosures will provide investors with a higher degree of certainty and transparency.

With an ever-increasing share of companies pledging to go "net-zero" and "carbon neutral," offsets will play a greater role in corporate emissions reduction strategies. As the Rules acknowledges, not all offsets are created equal; the overall efficacy of offsets and corporate net-zero commitments depends on the quality of offset procured.

Chestnut grew out of the acknowledgement that many companies with newly minted net-zero targets, particularly in the oil and gas sector, will need carbon offsets to reach their goals. For net-zero commitments to have an actual impact on bending the emissions curve towards zero, offset projects must incentivize results that remove emissions in a verifiable manner.

We agree with the five required disclosures proposed by the Rule for companies that use carbon offsets: (1) The amount of carbon reduction represented by the offsets; (2) the source of the offsets (3) a description and location of the underlying projects; (4) any registries or other authentication of the offsets; and (5) the cost of the offsets.[1] This information will enable investors to determine the overall impact and effectiveness of an issuer's use of carbon offsets.

To provide additional decision-useful information for investors, we urge the Commission to consider requiring issuers to provide a statement of quality assurance for purchased offsets. Specifically, the

[1] Proposed Rule at 283.

Commission should require the issuer to disclose how they have or plan to verify the offset and guarantee the continued existence of the offset. This could come in the form of a planned monitoring, verification, and reporting plan, or through third-party verification. This type of insight into the quality of carbon credits will empower buyers and traders to act with greater confidence when investing in companies that use offsets, thus driving funds toward high-quality projects and away from lower-quality projects.

Requiring issuers who rely on carbon credits to meet emissions targets to disclose information relating to the quality of the carbon credits purchased will enable investors to better understand whether the carbon credits are leading to carbon removal or avoidance. This could, in turn, lead to investors making different investment decisions based on the overall efficacy of the company's offset strategy.

## Disclosure of Scope 3 Emissions Will Not Produce Decision-Useful Information for Investors and Will have a Detrimental Effect on the Overall Usefulness of the Rule Itself

Calculating Scope 3 emissions is a lofty goal, yet elusive in practice. Requiring mandatory disclosure of Scope 3 emissions is, at best, unlikely to provide decision useful information and, at worst, likely to create a higher degree of uncertainty for investors leading to unreliable data, inaccurate representation of investment opportunities, and poorer investment decisions overall.

At present, there is no reliable way to calculate Scope 3 emissions from the oil and gas sector. With current methodologies, including the GHG Protocol, it is near impossible to accurately account for end use of the hydrocarbon molecules generated by oil and gas producers like ourselves. There are too many variables, too many users, and not nearly enough data infrastructure to track the flow of our product through the market. Simply put, the data inputs needed to provide accurate, quantitative Scope 3 emissions estimates do not exist.

As written, the Proposed Rule requires disclosure of Scope 3 emissions only if those emissions are material, or if the registrant has set a GHG emissions reduction target or goal that includes its Scope 3 emissions.[2] SEC itself has acknowledged how difficult it is to collect the necessary data for Scope 3, citing these difficulties at numerous points throughout the proposed rule: "We recognize that the methodologies pertaining to the measurement of GHG emissions, particularly Scope 3 emissions, are evolving." [3]; "Scope 3 emissions typically result from the activities of third parties in a registrant's value chain and thus collecting the appropriate data and calculating these emissions would potentially be more difficult than for Scopes 1 and 2." [4]; "We acknowledge that a registrant's material Scope 3 emissions is a relatively new type of metric, based largely on third-party data, that we have not previously required." [5]

[2] Proposed Rule at 170.
[3] Proposed Rule at 167.
[4] Proposed Rule at 168.
[5] Proposed Rule at 182.

As a leader in ESG space, we understand the need to quantify emissions. You can't manage what you can't measure but requiring the mandatory disclosure of Scope 3 emissions will not get the oil and gas industry any closer to managing its emissions.

Existing methodologies do not provide reliable or accurate data.

At present, Scope 3 emissions accounting for most sectors, including the oil and gas sector, is built upon a foundation of dubious assumptions. These assumptions have the potential to badly misrepresent total emissions associated with issuers' business activities. A key issue is how to run a reliable, fair downstream calculation. Once our product is pumped into a pipeline or transported out of our direct control, there is no way to track how, when, and where those hydrocarbon molecules will burn and release emissions.

In looking at the oil and gas sector as a whole, knowing the end-user of our product would require buy-in and tracking from everyone associated with the production, transportation, storage and end-use of our molecules. However, not everyone in our value chain falls within the SEC's purview, nor do the companies and individuals in this chain have the tools to participate in emissions calculations to create remotely reliable data. Therefore, to even provide a rough estimate of our Scope 3 emissions would be knowingly relying on inaccurate data, which itself is based upon imprecise assumptions of end-use. This is the scenario faced by every issuer in the oil and gas sector: we have no way of knowing where our barrels of oil or gas go and how they will be used.

Unreliable, Unrealistic Data Will Lead to Double Counting, Undermining Confidence in Emissions Analysis, and the Companies that Perform Them.

The unreliability of downstream emissions data presents a second, interrelated issue: double counting. Double counting arises when there is no agreed-upon method for delineating who is responsible for the ultimate downstream combustion of the hydrocarbons produced (which at present, there is not). Is it the oil producer? The pipeline company? Perhaps the gas station owner at the point of sale? The family of four filling up their Ford Focus?

Even if everyone in the above scenario *was* capable of tracking and attributing their own emissions, there would still need to be a protocol to somehow assign responsibility of downstream combustion to individuals throughout the entire value chain. To lay this responsibility solely at the oil and gas producer's feet would be to give all others participating in the oil and gas sector a free pass on the emissions they are unquestionably partially responsible for releasing.

Taken to the other extreme, if each business participant in this scenario was required to classify the downstream combustion emissions in their own Scope 3 calculation, there would be double, triple, quadruple, etc. counting of emissions leading to an inaccurate picture of actual emissions produced. To base regulations on unsound GHG estimation and accounting practices will lead to poor policy choices that will impact not just the directly regulated community, but every participant in the value chain. Without an approach that can account for every participant in the value chain, such as a mass-balance approach, assigning downstream combustion responsibility to an increasingly complex value chain is, at present, an impossible task.

The Resources Required to Measure Scope 3 Emissions Are Significant.

The resources required to collect, quantify, and ensure the accuracy of Scope 3 data will likely be significant, not just in terms of the volume of required information but also because of the liability risk that companies face for inaccuracies in their disclosures. To obtain accurate data, every participant in the oil and gas value chain would need to be capable of both measuring and reporting their up and downstream emissions. This is far from possible at the present juncture.

## Conclusion

As a fund dedicated to improving the emission profiles of our investments, we believe the SEC must think critically about its choice to include Scope 3 emissions in the disclosure requirements. Investors will not benefit from disclosure of Scope 3 emissions, as the data is unreliable, inconsistent, and could lead to double counting and a gross misrepresentation of where responsibilities for abatement lies. We strongly recommend the Commission revise the Scope 3 disclosures to be optional. However, we do believe investors will benefit from the disclosure of information relating to carbon offsets. As written, the Rule will elicit beneficial information for investors to determine the veracity of issuers net-zero claims.

We thank you for your consideration.

Sincerely,

Benjamin Dell

Managing Partner, Kimmeridge