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Marathon Oil Corporation

VIA EMAIL

June 17, 2022

Vanessa A. Countryman
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
(rule-comments@sec.gov)

Dear Ms. Countryman:

Re: Comments of Marathon Oil Corporation on the Proposed Rule "The Enhancement and Standardization of Climate-Related Disclosures for Investors," SEC File No. S7-10-22.

Marathon Oil Corporation ("Marathon Oil") submits these comments on the Securities and Exchange Commission's (the "Commission") proposed rule called, "The Enhancement and Standardization of Climate-Related Disclosures for Investors" (the "Proposal").[1] Marathon Oil appreciates the opportunity to provide comments on the Proposal and recognizes the importance of the mission of the Commission to protect investors, maintain fair, orderly, and efficient markets, facilitate capital formation and promote public trust in the market.

Marathon Oil is an independent exploration and production ("E&P") company based in Houston, Texas, focused on U.S. resource plays: Eagle Ford in Texas, Bakken in North Dakota, STACK and SCOOP in Oklahoma and Northern Delaware in New Mexico. Our U.S. assets are complemented by our international operations in Equatorial Guinea. Our overall business strategy is to responsibly deliver competitive corporate level returns, free cash flow and cash returns to stockholders, all of which are sustainable and resilient through long-term commodity price cycles. Keeping our workforce safe, maintaining a strong balance sheet, and responsibly meeting global energy demand with a focus on continuously improving environmental performance, serving as a trusted partner to our local communities and maintaining best-in-class corporate governance standards are foundational to the execution of our strategy. Our industry is essential to supplying energy that makes life modern, healthier, and better—while doing so in ways that tackle the climate

[1] 87 Fed. Reg. 21,334 (April 11, 2022).

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challenge: lowering emissions, increasing efficiency, advancing technological innovation, building modern infrastructure and more.

Investors and other stakeholders with specialized interests, such as sustainability, or climate-focused portfolios are greatly valued by Marathon Oil. Each year, we spend considerable time and resources publishing an extensive Sustainability Report designed to provide shareholders, potential investors and other stakeholders information about emissions, emissions reductions and internal policies and governance relating to climate risks and our sustainability efforts. However, while information regarding climate and sustainability efforts is valuable to many stakeholders, this does not make it material in the securities context. Furthermore, the fact that climate risks and transition costs and opportunities may be material to the performance of some companies does not make it material to all companies. We support providing investors and other stakeholders the information they need to assess our efforts relating to climate risks, including furnished data as contained in our annual Sustainability Report, but we cannot support the Proposal as currently written for the reasons discussed below.

Our key comments and issues with respect to the Proposal are outlined below and detailed in the pages that follow:

I. Materiality issues
   a. The Proposal requires disclosure of information that is financially immaterial.
   b. The Proposal overall is inconsistent with the long-held materiality standard.
   c. The Proposal would require companies to disclose Scope 3 emissions where they are material and/or when targets have been disclosed, but ignores duplicative reporting, inconsistency across registrants, challenges with any meaningful assessment of risk and relevance to strictly E&P companies that do not manufacture products nor sell directly to consumers.
   d. The Proposal fails to adequately consider existing materiality rules specifically in relation to the financial statement disclosures.

II. Cost to registrants greatly outweighs the benefit to the investors
   a. The disclosure of financial impact metrics, expenditure metrics, and financial estimates and assumptions is unworkable and imposes an undue burden on registrants.
   b. We do not support the concept of a consolidated climate statement.
   c. The Proposal will yield incomparable, inconsistent, and unreliable data across registrants.

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d. Consolidated versus Operated emissions reporting creates significant challenge in our business and results in misalignment with existing U.S. Environmental Protection Agency (EPA) reporting protocol.
e. Scope 3 compilation cost and complexity exceeds benefit given duplicate reporting and inconsistency across registrants.

III. The proposed timeline for implementation is impractical, unworkable, and untenable
a. The proposed timeline relative to S-X financial and footnote disclosures is not realistic considering the proposed changes
b. Scope 1 and scope 2 historical data requirements on the proposed accelerated timeline create significant concern regarding existing system capabilities and the time required for necessary enhancements to ensure accurate and meaningful reporting.
c. The availability of emissions data is mis-aligned with the 10-K filing timeline and inconsistent with EPA GHG reporting requirements.

IV. The Commission could achieve its goals by allowing registrants to furnish, rather than file, the required information

V. The Commission should strengthen the safe harbors

VI. The Proposal will confuse investors and harm the public interest

VII. The Commission should limit financial reporting requirements to prospective periods

VIII. Scope of authority and First Amendment issues

I. Materiality issues

a) The Proposal requires disclosure of information that is financially immaterial.

We believe that the Commission should abide by the long-standing, judicially accepted understanding of "materiality", which limits registrants' reporting obligations to information material to a reasonable investor's investment decision, taking into account the "total mix" of information available to investors.

The Commission's proposed revisions to Regulation S-X would involve a significant amount of new accounting infrastructure without any clear tie to established, accepted accounting principles. The enormous costs and complexity associated with doing so are discussed in more detail in Section II, below. Importantly, the proposed requirements would essentially force companies to report minute levels of detail that cannot be considered material to most investment decisions and contravenes the materiality standard that protects investors from being overloaded with unnecessary information. Registrants would be required to disclose, on each line item, the financial

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impacts of weather events and other natural conditions, as well as costs related to efforts to reduce emissions and mitigate climate-risks, without any meaningful materiality threshold.[2]

For example, the Proposal would require registrants to disclose the impacts of greenhouse gas emission reduction efforts on an "aggregated line-by-line basis for all negative impacts and, separately, at a minimum on an aggregated line-by-line basis for all positive impacts."[3] This requirement will overwhelm investors with meaningless information.

Similarly, as discussed in detail in Section II below, the Proposal's description of the types of "climate-related risk" for which registrants must report financial data is far too broad. It would require vast and granular reporting on all "actual or potential" impacts of "climate-related conditions and events" on financial statements, business operations and value chain, down to the zip code.[4]

Without further limitation, or an established baseline for what events would and would not be considered climate-related, this information will result in reporting *enormous* amounts of information that will not be helpful to those assessing climate risk with respect to a registrant's operational and financial performance.

b) The Proposal is overall inconsistent with the long-held materiality standard.

Although the Proposal purports to adopt a materiality threshold in some respects, its explanation of the requirements depends upon a concept of "materiality" that is inconsistent with the long-held materiality standard. As explained above, materiality focuses on what is material to a reasonable investor for purposes of investment decisions, not all information that any investor may find interesting. Investors and other stakeholders with specialized interests, such as sustainability, or climate-focused portfolios are greatly valued. In fact, we have spent considerable time and resources publishing an annual Sustainability Report, and have adopted quantitative goals for the near, medium, and long-term horizon across three core areas of focus: GHG intensity, methane intensity and gas capture. That does not, however, mean that those disclosures, metrics, and standards are material to a reasonable investor's evaluation of whether an investment in our company is financially sound.

Put another way, the fact that information regarding climate and sustainability efforts is valuable to some stakeholders does not make it material in the securities context. And the fact that climate risks and transition costs and opportunities may be material to the performance of some companies

[2] The only limitation is that disclosure would not be required if the sum of the absolute value of all the impacts is less than one percent of a particular line item. This effectively provides no limit, however, because the value is absolute, meaning that disclosure is required even without any net effect.

[3] 87 Fed. Reg. At 21,464.

[4] *Id.* at 21,465.

does not make it material to all companies. Rather than allow the materiality standard to govern disclosures of particular registrants, the Proposal usurps existing materiality concepts.

As discussed in Section II, many of the Proposal's financial reporting requirements would be overly granular, expensive, and unhelpful. The Commission should require registrants to report only those costs and impacts of climate and transition related risks and opportunities that the registrant deems material to its financial statements. This would ensure investors are provided with important information relating to the soundness of the investment and the securities' risks. And it would enable companies to continue to provide more robust and helpful information to stakeholders through the separate, established and market demanded climate and sustainability reporting protocols.

For the reasons noted here in Section I and in Sections II and III below, we strongly recommend that the Commission remove all Regulation S-X footnote disclosure requirements regarding financial impact metrics, expenditure metrics and financial estimates.

c) The Proposal would require companies to disclose Scope 3 emissions where they are material and/or when targets have been disclosed, but ignores duplicative reporting, inconsistency across registrants, challenges with any meaningful assessment of risk and relevance to strictly E&P companies that do not manufacture products nor sell directly to consumers.

As a producer of oil and gas (E&P company), we firmly believe that Scope 3 emissions are not material to our investors. We do not manufacture products and we do not sell directly to consumers. In fact, we rarely, if ever, receive questions regarding our Scope 3 emissions from investors and financial analysts, which we believe is indicative of the lack of materiality of such information to their investment decisions.

Scope 3 emissions include indirect greenhouse gas emissions in the upstream and downstream activities of a registrant's value chain. This would include emissions generated by a third-party who manufactures a product the registrant purchases, or even the transportation of those products. Greenhouse gas emissions from other's activities are not within the control of the registrant and their materiality should generally only be considered in the context of the company directly responsible for generating them. Moreover, given the lack of control and access to direct information about third parties' operations, there is significant uncertainty about the accuracy of Scope 3 information. These third parties may not be generally subject to SEC regulations and therefore they may not have the control structures of SEC registrants. This casts doubt on whether data provided by such third parties would reach a level of meaningful and good faith precision or comparability. That is not to say Scope 3 emission can never be material to a company's operations. For example, some companies make material commitments to offset their own emissions through their suppliers or to reduce the emissions across specific aspects of their value chain. But this only highlights that the materiality of Scope 3 emissions must be evaluated on a case-by-case, registrant-by-registrant basis and does not lend itself to across-the-board presumptions of materiality, such as the Proposal implies for “oil and gas product manufacturers”. As a strictly exploration and production company, we are not “product manufacturers” but this vague definition creates more uncertainty and underscores the need for Scope 3 materiality to be assessed at a specific registrant level, not by prescriptive assertions within proposed rulemaking. We discuss more issues concerning the complication of collecting Scope 3 emissions data below.

Furthermore, Scope 3 emissions reported by an individual company are not an indicator of a company’s impact on climate change or its exposure to climate risks because it does not indicate whether global greenhouse gas emissions are being reduced or increased. For example, the significantly increased consumption of U.S. natural gas to displace more carbon intensive fuels, such as coal, increased the Scope 3 emissions of many individual natural gas companies. At the same time, however, this growth also enabled a significant net greenhouse gas emissions reduction in the U.S. electric power sector. This crucial perspective is lost when Scope 3 emissions are not assessed, and presented, in context.

Reporting Scope 3 emissions would require registrants to evaluate fifteen different categories of indirect emissions across their value chain, such as the emissions generated in the manufacture and transportation of the products they purchase. This would involve onerous data collection from third parties, which would require registrants to rely on third-party estimates for which they have little control. It also will lead to significant double counting as multiple parties across the value chain of a third-party’s product may be reporting the same emissions.

Furthermore, it should be noted that 100% of the oil and gas produced by an E&P company, or hydrocarbon products refined or manufactured by a company, may not be combusted at the end of the product lifecycle (e.g., products such as lubricants or asphalt). As such, without better defined standards reporting on all Scope 3 emissions likely will lead to significant over counting. To that end, it is worth noting that views on the value of Scope 3 emissions are still evolving, including which categories of Scope 3 emission are helpful to whom.

And finally, oil and gas produced in the United States is done so to the highest environmental and regulatory standards and as such, if U.S. production is displaced by non-U.S. sources to meet global demand, global emissions would in fact increase. One could argue that growth in U.S. oil and gas production should be encouraged given its top decile environmental footprint and should be the preferred supply source to meet global oil and gas demand even though such growth would essentially elevate its Scope 3 emissions.

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d) The Proposal fails to adequately consider existing materiality rules specifically in *relation to the financial statement disclosures.*

Marathon notes that existing rules address and require disclosure of material climate risks and effects in the financial statements. As such, we believe that any incremental disclosure beyond the current regulatory framework inherently mandates disclosure of financially immaterial information. We oppose such a disclosure mandate.

The Proposal would require a significant undertaking of new accounting processes without any clear standardization of baselines or norms. This would have the resultant effect of forcing companies to disclose an avalanche of immaterial information such that it completely undermines the intention of the materiality standard to protect investors from being overwhelmed by such information. For example, there is no commonly accepted standard for what is an acute, chronic, or transition risk and how to assess it with the level of precision required for financial disclosure. The Proposal provides some examples of risks but there is no clear understanding of what would be considered normal events and what portion outside of a defined "normal" for a Commission-defined event may be associated with climate change. Lack of any established baseline on these could mean that everything is material to some without the Commission establishing or knowing what is appropriate.

The Financial Accounting Standards Board (FASB) explicitly states in Accounting Standards Codification (ASC) 105-10-05-6 "the provisions of this Codification need not be applied to immaterial items". The 1% footnote disclosure threshold is significantly below the current concept of materiality as applied to financial statements. Furthermore, the numerical disclosure requirements emanating from a 1% threshold essentially creates two separate materiality environments – one for climate-related financial data and a second for all other financial data.

In Section II.a. below, we provide specific examples of and elaborate on what a 1% threshold entails. One of those examples involves Production costs, for which we reported $534 million in our 2021 Form 10-K. A 1% disclosure threshold for Production costs results in disclosures of costs covered by the Proposal equal to or greater than $5.3 million for 2021. That is significantly below what would be considered material by external auditors and management when applying typical approaches to determine materiality.

The 1% threshold is also significantly below and ignores the "material" threshold mandated by Item 303 of Regulation S-K. Item 303 specifically uses the words "material changes", "material trends" and "material impact" in outlining the disclosure requirements for Management Discussion and Analysis. We support the continued reliance on the existing materiality definition, believe the current rules provide the appropriate framework for registrants, and do not support the Commission's arbitrary use of a 1% threshold (or any prescribed threshold).

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II. Cost to registrants greatly outweighs benefits to investors

a) The disclosure of financial impact metrics, expenditure metrics and financial estimates and assumptions is unworkable and imposes an undue burden on registrants.

The Proposal would require data aggregation, analysis, and disclosure at a granular level never experienced before by any public registrant by way of a 1% threshold for any line item within the consolidated balance sheet, statement of comprehensive income and statement of cash flows. We object to the use of any prescribed financial metric threshold in the Proposal and instead reinforce our belief that existing materiality rules are the appropriate governing mechanism.

Using Marathon's 2021 Form 10-K for discussion purposes, we would have to aggregate and analyze financial data that allows us to determine if we experienced increases or decreases in Production costs due to "severe weather events, other natural conditions, transition activities, and identified climate-related risks" totaling a mere $5.3 million (1% of total Production costs of $534 million) for 2021. The same calculation leads to a disclosure of $7.3 million related to Shipping, handling, and other costs, or $10.5 million related to Capital expenditures (each 1% of their respective line items). These levels of disclosure are unreasonably low for an entity that reported $5.5 billion of Revenue, $1.3 billion of Operating Income, $17 billion of Total Assets and more than $10 billion of Stockholders' Equity for 2021.

Furthermore, the amount of incremental effort required to aggregate, organize, analyze, and then actually determine if the data meets the stated threshold is insurmountable. In just the trailing 12 months prior to the date of our letter, we paid over 2,800 unique vendors and processed more than 550,000 individual invoices. We have more than 6,900 productive wells across 1.5 million acres spanning 5 states in the U.S.

As would be expected, the very people who require materials and services are the ones who place the orders with our vendors and suppliers. In close collaboration with accounting, they code the invoice or purchase order, which determines the capital/expense designation; and the nature of the item or service performed, which in turn informs which line item in our financial statements the cost is classified. That person's immediate supervisor then approves or revises the coding.

The vast majority of our invoices are directly related to our field operations, which means our Operations personnel place the orders and work with accounting to code the bulk of the invoices. We employ over 1,700 Operations personnel and contractors. Not to state the obvious, but the primary function of our Operations personnel is to indeed focus on operations while ensuring the highest standards in both personnel and process safety as well as environmental performance,

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including our direct and indirect emissions. Any additional responsibilities resulting from the Proposal would cause us to redirect front line efforts to identify information that is not material to an investor’s decision. Such additional responsibilities will undoubtedly lead to incremental costs that extend beyond the benefits of such immaterial information.

To further elaborate, internal organizations and systems that comprise our operations include Field Operations, Planning, Development, Drilling and Completions, Health, Environmental & Safety, and the Responsible Operations Management System (ROMS). These organizational teams are responsible for the foundational nature of our business, such as preparing a site for drilling, drilling and completing a well, installing infrastructure, testing the equipment, maintenance & repairs, and ensuring operational effectiveness and efficiencies of existing production sites. Marathon would have to create a company-wide training program for all these personnel merely to comply with this element of the Proposal. We would have to train the trainers, create content, deliver that content, and be able to sustain the training program (since personnel rotate or to account for turnover). The is all to merely educate those who need to identify costs incurred and does not account for the actual process of data aggregation, analysis, and creation of disclosure content. We note that this example *excludes* supporting organizations like Global Supply Chain, Information Technology, and Legal but we obviously would have to incorporate those departments into the program and incur further costs as a result.

We introduce Winter Storm Uri from February 2021 as an illustrative example. We acknowledge Uri was a severe weather event by any reasonable measure. As per the Proposal, Marathon would be required to assess the Storm’s financial effects, on a line item basis. If we focus on Production costs, as we noted above, we would be required to disclose individual or aggregate expenses that exceeded $5.3 million. That may seem like a simple task yet is much more challenging when discussed in detail given all four of our U.S. unconventional basins were affected (again, more than 6,900 productive wells across 1.5 million acres spanning 5 states in the U.S.).

First, our Operations personnel would have to identify the costs that simply might be eligible based on the Proposal’s guidelines. We also must recognize that extreme events, like Uri, exert significant pressure on personnel as they make decisions to acquire assets, incur services, etc., when safety and reliable energy supply are the primary concerns. They do so while working with limited visibility and tremendous volatility in information and are not concerned or focused on coding and tracking of costs to comply with a disclosure regime like the Proposal would require. Yet the Proposal itself states “…disclosures would involve estimation uncertainties that are driven by the application of judgments and assumptions, similar to other financial statement disclosures.” We would struggle to uniformly apply a process that inherently includes uncertainties, judgment and assumptions encompassing more than 1,700 Operations personnel, especially those made before, during and after strenuous and chaotic situations.

The aggregation of potential disclosure data itself would necessarily lead to a de facto climate-related sub ledger or segment within our financial reporting system. In a subsequent section, we raise grave concerns about the current capabilities of reporting systems in this regard. The reality is that our IT systems would require significant reconfiguration just to serve as a repository for this data, notwithstanding the need to extract and analyze for the data disclosure.

We also would have to build out a review process, compliant with our internal controls over financial reporting (ICFR) framework, involving multiple organizations just for climate-related financial information. In addition to those organizational teams previously identified within Operations, we would need to include Finance and Accounting, Legal, and Global Supply Chain. This would be analogous to the implementation of a new SOX regime, requiring us to build, from the ground up, a control framework involving many groups to comply with purchase to pay interpretations of the Proposal.

We note the rule further states:

> "Accordingly, for each type of financial statement metric, the proposed rules would require the registrant to disclose contextual information to enable a reader to understand how it derived the metric, including a description of significant inputs and assumptions used, and if applicable, policy decisions made by the registrant to calculate the specified metrics."

This section of the rule would then require that the team responsible for creating disclosure content (Accounting) closely collaborate with Operational personnel to obtain the information set described by the Proposal. Only by virtue of that process could Marathon's footnote be responsive to the Proposal. Such collaboration would be incremental to the existing status quo and significantly increases the regulatory compliance burden on all organizations.

One of the very first decisions in this process is to define the beginning and end points of a severe weather event like Uri. However, we believe the Proposal lacks sufficient standardization or detailed guidance in this regard. The Proposal seems to default to a registrant's view of "significant inputs and assumptions used" model. This is unworkable as a registrant would need to create finite boundaries to enable a comparison of revenues realized/lost or costs incurred before and after Uri. The most basic question is when did Uri begin affecting our operations such that it qualifies as a severe weather event and when did its effects terminate? In its simplest form, one might assert that the meteorological time boundary was February 13 – 17. This follows when Uri formed off the coast

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of the Pacific Northwest, moved inland, and exited to sea on February 17. We observe that Henry Hub natural gas prices experienced significant fluctuations prior to and after these dates, so using the meteorological timeline would necessarily exclude certain revenue transactions as well as fluctuations in Production costs incurred after Uri.

Another interpretation could be from February 11 – 19. This would seem to align with visually “abnormal” changes observed in the Henry Hub gas price index as published by the Energy Information Agency. Yet this timeline includes dates prior to Uri’s meteorological timeline and would also exclude fluctuations of Production costs incurred beyond February 19. A process that includes dates prior the meteorological timeline presupposes a determinative outcome that is inconsistent with FASB’s accounting standards.

If we utilize a timeline in which we assessed, repaired, and restored operations, that timeframe would be substantially longer, certainly months after February 2021. However, pre-existing supply chain constraints & labor scarcity exerted upward pressure prior to Uri and continued after Uri. At what point do inflationary costs become disassociated from Uri and are part of the general economic environment? We believe the Proposal makes a situation like this unworkable given the inherent subjectivity involved, and especially so since any data disclosed by a registrant must survive a reasonable assurance process.

Using the winterization of equipment as another example, such costs incurred prior to Uri would seem to qualify for consideration when assessing the data; but the Proposal is unclear as to why ordinary operational and safety protocols like equipment protection seemingly qualify as a climate-related risk or weather event. The Proposal lacks sufficient clarity as to how a registrant like Marathon, with operations in North Dakota that routinely experience extreme cold temperatures, might categorize winterization costs as compared to our operations in South Texas (which is known more for pervasive heat as opposed to cold temperatures). Would we also need to consider the costs of electricity incurred to maintain our operations during Uri? In many states, electricity is closely tied, but not directly linked, to natural gas prices. Do we have to undertake an exercise to quantify changes in electricity costs, whether at our corporate headquarters or at each of our 6900 wells, and ascribe those changes to Uri? Do we also need to consider the variability in costs of diesel and gasoline required to power the generators that provided electricity to our production facilities during Uri? To further illustrate, our industry still has unresolved litigation related to Uri, almost 18 months after the Storm swept through the U.S. We would be challenged with identifying the precise date and time our cost profile ceased to be affected by events attributable specific to Uri, which may lead to multi-year or evergreen disclosures.

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Turning to natural gas revenues, the Proposal lacks sufficient clarity not only with respect to identifying the beginning and end points for comparison but also how to ascribe pricing changes to a discrete event. The Proposal would necessarily cause us to conclude that the entirety of the Henry Hub natural gas price change was directly related to Uri; however, natural gas is a globally traded market. We would have to assess pricing fluctuations at each of our four basins, which span from North Dakota down to South Texas, to facilitate compliance with the Proposal. Yet the Proposal is not clear how we would account for other variables, such as the general upward price trajectory of natural gas since the fourth quarter of 2020, known capacity constraints within the nation's electrical grid (especially in Texas), speculators entering or exiting the market during this time, pre-Uri supply/demand imbalances, and geopolitical events. Price fluctuations are not disaggregated; rather, they are a culmination of multiple variables, known and unknown, between market participants.

Further complicating the analysis would be that production in some areas of a given field were completely shut-in, others partially shut-in, while others continued production unaffected. Production volumes are dynamic and sometimes unpredictable even without a severe weather event. The Proposal's effects would seemingly have us maintain a perpetual, incident-free operating environment, for every well site, as a baseline for every financial statement line item to compare against climate-related events and transition risks. For example, the Proposal is unclear as to how we might consider the permanent shut-in of a well pad for which we previously estimated multiple years of future production (this may occur due to safety or environmental issues when trying to restart production). Do we have to perpetually track the hypothetical production profile and aggregate the foregone revenue? And would we do the same for the operational costs of that well pad? How do we discretely identify the effects of our vendors who experienced disruptions themselves or contribute to the supply chain/labor bottlenecks? What if we leave a well pad shut in for one year after Uri, because of supply chain/labor bottlenecks, and then restart the well? We do not believe the Proposal adequately considers the complexity of such operational decisions.

While we acknowledge all the above decision points are a matter of management judgment, we believe we provided an example that demonstrates the amount of incremental effort required for just one weather event. The Proposal would seemingly require us to monitor all weather events for the mere potential of triggering a climate-related disclosure. That workload would be further increased when we factor in our ICFR framework. Having to perform that analysis for a multitude of weather events every day, with executing controls in an ICFR environment, is unworkable. Returning to the decision of the beginning and end dates of Uri, it is possible we would have to establish multiple timeframes for each of Revenue and Production costs across our four basins. Maintaining multiple time frames for multiple financial statement line items is not a sustainable solution. The process would also fail to address any intervening occurrences of discrete weather events or market-based fluctuations unrelated to Uri. We believe that each registrant will define each event differently, and despite potentially robust disclosures, it undoubtedly leads to overwhelming information and incomparability across the spectrum, even for those companies with operations in the same geographic location

We also ask the Commission to consider how the assurance requirement over the financial statement metrics contributes to making the Proposal unworkable. First, the timeline (which we address in more detail in Section III) does not adequately provide registrants an opportunity to integrate a robust ICFR framework for the financial metrics or footnote disclosure, especially with the 2023 calendar year as the initial disclosure period. Given the lack of clarity by the Proposal, the fact that this is a new disclosure regime, and the innumerable variables and decision points along the way, the complexity of instituting a well-functioning (and auditable) ICFR framework is unfathomable. Without a robust framework, there would be no basis on which to render assurance.

We note several big 4 accounting firms have announced plans to invest heavily over the next several years to hire new personnel. We also expect the other assurance firms or service providers who plan to enter this market to make investments commensurate with their scale. As such, already scarce resources become scarcer as both registrants and assurance providers compete for the same limited talent pool. This is further exacerbated by the robust employment market in the U.S. We also remind the Commission that none of today's accountants with substantive career experience, whether employed as auditors or corporate accountants, were originally trained to be climate or weather experts. We believe the assurance requirement in the Proposal creates a significant incremental compliance hurdle for registrants and assurance providers.

Finally, as much as we would like to provide the Commission with some discrete data regarding expected costs to comply with the Proposal, we are largely unable to do so at this time. First, the approximate 90-day timeline in which we had to read, review, and assess the complexity of a 500+ page proposal with over 200 numbered questions was unreasonably short. As of the date of this letter, we continue to interpret the Proposal, assess its scope and resultant impact on our existing processes. For clarity, we already identified certain existing processes that will require enhancement or acceleration and gaps in other areas that will require new initiatives. However, we are only in the nascent stages and certainly nowhere near ready to begin implementing changes or new processes. We can affirm that we expect incremental implementation and ongoing compliance costs to be several multiples of our costs incurred when implementing ASC 842 (Leases) and ASC 606 (Revenue from Contracts with Customers), including additional staffing, training, and consultant costs. This guidance is exclusive of any costs we have yet to estimate for new or reconfigured IT systems, which we project will be materially additive to our total costs. We want to also reinforce to the Commission that we expect significant challenges regarding the IT landscape given current competition for IT resources. We believe this guidance is conservative, i.e., optimistically low, and the actual costs will be much higher as we mature our project lifecycle. Adding complexity to the dynamic is the unique situation of expecting the Commission to publish a final rule in such close proximity to the first year of implementation (e.g., 2023 10-K for footnote disclosures) that will undoubtedly cause a significant escalation in our cost estimates.

b) We do not support the concept of a consolidated climate statement.

We note the Commission asked if a “consolidated climate statement“ should be created in addition to the consolidated balance sheets, statements of comprehensive income, cash flows and other tradition statements. Throughout this letter, we believe we adequately outlined for the Commission, with sufficient detail, why the Proposal requires significant revision in certain areas and/or is unworkable for others. Otherwise, the effective consequence of the Proposal is to indeed create such “climate” statements. However, the concept of a consolidated climate statement goes far beyond a single summarized page and would most certainly evolve to include climate-related effects on the income statement, balance sheet and statement of cash flows, with associated footnotes, thereby creating a subset of the consolidated financial statements. We believe such information will overwhelm the investor, frustrate the investor’s ability to identify and assess meaningfully material information, and impose an undue burden on us without any tangible benefit. We reinforce our belief that the Proposal inherently would create two separate materiality environments, which is antithetical to the existing materiality concepts in Regulations S-K and S-X.

c) The Proposal will yield incomparable, inconsistent, and unreliable data across registrants.

It is noted in the preamble the goal of the Proposal is to “elicit climate-related disclosures that are consistent, comparable, and reliable” while also “to limit the compliance burden associated with these disclosures.” We believe that, if enacted, the Proposal will result in the exact opposite; inconsistent, incomparable, unreliable, and costly data.

As Commissioner Peirce noted in her public statement of April 14, 2021:

> “Unlike financial accounting, which lends itself to a common set of comparable metrics, ESG factors, which continue to evolve, are complex and not readily comparable across registrants and industries…Moreover, converging standards would be antithetical to our existing disclosure framework, which is rooted in investor-oriented financial materiality and principles-based requirements to accommodate the wide variety of registrants.”

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In a public statement from March 11, 2021, then-Acting Director John Coates (Division of Corporate Finance) demonstrated the Commission itself recognizes challenges associated with ESG reporting:

> "There remains substantial debate over the precise contents and details of what ESG disclosures might or should encompass. Part of the difficulty is in the fact that ESG is at the same time very broad, touching every company in some manner, but also quite specific in that the ESG issues companies face can vary significantly based on their industry, geographic location, and other factors. As such, there is no one set of metrics that properly covers all ESG issues for all companies. Moreover, the landscape is changing rapidly so issues that yesterday were only peripheral today are taking on greater importance."

Especially challenging would be registrants trying to define and interpret climate data, events, and risks without substantive, detailed, formal guidelines provided by the Commission. This will naturally lead to differing company interpretations and significantly undermine the comparability and consistency of data. For example, suppose that two hurricanes formed in the Gulf of Mexico in a reporting year that disrupted operations for three companies with onshore operations located in a similar geographic area. One company could determine two hurricanes were normal for a year. One company could determine it was normal for one hurricane to make landfall, but a second was due to climate change. Finally, one company could determine the instance of two hurricanes was not unusual, but the intensity of the hurricanes was unusual, and a portion of the disruption was due to climate change. Any, or all, of these determinations could be correct yet lead to significant differences in reporting and disclosure under the proposed rules.

Our previous example of Winter Storm Uri provides another instance where each registrant may concur Uri was a severe weather event but have differing timelines associated with its affects. That would lead to inconsistencies between registrants that would then impose additional time and effort on investors as they seek to analyze and harmonize registrants' disclosures.

Since at least 2002, the Commission has expressed concern that excessive information in registration statements and quarterly/annual reporting can overwhelm investors. The flood of immaterial information, as the Commission has noted, is detrimental to investors. The Proposal will only add to that flood of information and make the reports less useful.

Some regulatory requirements and sustainability reporting standards already require emissions reporting using methods not covered by the proposal. The lack of a uniform approach to emission reporting across regulatory requirements will cause confusion and potentially conflicting reports. Moreover, the demand for climate information from niche investors is new and evolving. There continues to be a lack of consensus among financial stakeholders about how to assess and apply climate data in the decision framework. This is evidenced by the variety of voluntary reporting initiatives and third-party certification organizations. The “marketplace” is still evolving in this area. The Commission’s one-size-fits-all approach is just as likely to stifle the disclosure of helpful information to interested investors as it is to improve it.

Requiring disclosures of this information in public filings is misleading to investors because it gives a veil of authority to unreliable information based on assumptions, speculation, and models. We note that registrants and the Commission continue to face challenges involving the reporting of GAAP and non-GAAP financial measures within an already well-established financial reporting framework; this example provides a glimpse of the enormous challenges associated with a completely new and complex climate framework that would only be incremental to existing financial reporting processes. The Proposal fails to adequately account for the sheer enormity of variables and decision points for emissions volumes and financial effects arising from any given climate event or risk. These same variables and decision points will inevitably frustrate the assurance requirement, yet the Proposal presupposes such items are auditable. The Commission itself has experienced that reasonable differences of opinion exist among accountants regarding the application of clearly established accounting standards. We are concerned that such differences become magnified even more so with an entirely new disclosure regime, a demanding degree of precision never before required, and an assurance requirement for the emissions and financial metrics.

d) Consolidated versus Operated emissions reporting creates significant challenge in our business and results in misalignment with existing U.S. Environmental Protection Agency (EPA) reporting protocol.

Emission disclosures for facilities in which the reporting entity may have only an equity or otherwise passive interest creates significant concern. Emission disclosure requirements should be limited to information connected to facilities the reporting entity itself owns and operates. This approach will provide the investing public with information relevant to facilities over which the reporting company has actual control, establishing a link between investor choices and reporting company behavior.

In addition, the operated reporting framework aligns with EPA’s required reporting protocol, providing a relatively consistent basis with which to compare company performance. Operated emissions are calculated by the company in possession of the input data. However, disclosing companies typically do not operate all the wells in which they have an interest. It is typical in the U.S. onshore production space for companies to have very small interest in specific leases. These are known as non-operated wells and can consist of working interest amounts less than 1%. In these cases, the operating entities may not be required to calculate or disclose their emissions

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inventories due to being under the required reported threshold of 25,000 MT/basin. In many cases, the data will either be very difficult to obtain or may not exist, resulting in the use of basin averages or factors to address any known data gaps. The ultimate result is inserting additional uncertainty and incomparability to emissions-related disclosures. Requiring companies to develop new methodologies as per the Proposal would further burden the compliance costs and introduce unnecessary complexity to the process.

e) Scope 3 compilation cost and complexity exceeds benefit given duplicate reporting and inconsistency across registrants.

Currently, there is a lack of standardization relating to Scope 3 GHG emissions calculations. Therefore, reporting Scope 3 GHG emissions will not necessarily provide consistent and comparable information to a reasonable investor. Companies cannot provide any statement of reliability for this information, and the information is likely to be incomplete or collected in non-standardized ways by entities outside of the registrant's control. Scope 3 variability is further aggravated by the inherent uncertainties associated with assessing and determining Scope 3 emissions (e.g., variability in methods and estimates, prevalence of significant management judgment, challenges with data sourcing). As a result, Scope 3 reporting is likely to be susceptible to providing non-useful information investors.

There are 15 different categories a registrant must calculate and document when assessing the potential of Scope 3 emissions disclosures. Many of these categories, however, might be far from material for E&P companies. Yet the registrant must maintain the inventory as per the Proposal, imposing undue and unnecessary costs.

Additionally, an E&P company must source significant volumes of data from 3rd parties and such data for many of these categories is either non-existent, unavailable, or of such a questionable nature that it renders the data unreliable. Many efforts in the oil and gas industry involve joint ventures between private and public companies, contracts with private companies or governmental entities, and investments or loans from publicly traded lenders. Indeed, oil and natural gas producers engage in hundreds, if not thousands of joint ventures related to their production in the U.S. and around the world to mitigate financial risk and manage capital, and act sometimes as operators, and other times as non-operators. Sharing of risks and benefits is usually aligned with a company's percentage ownership in the operation. But the rules would require extensive data sharing and sourcing with these entities over which a registrant has no control. This will lead to good faith efforts by counterparties to provide such data, or as is more likely, require companies to restructure existing contracts or other governance documents. Renegotiating any contractual terms will very likely result in reopening other aspects of the joint venture arrangement (potentially to the disadvantage of the registrant and its shareholders).

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It should also be noted the impact of the Proposal will not be felt solely by registrants. Private companies and other entities will likely be forced to collect and provide data to registrants in a manner that would attempt to support the registrant's climate disclosure needs. Some companies may be able to absorb the economic cost to do this and some may not be able to afford to undertake the effort. It is likely this distinction would become a defining factor in a registrant's choice of supplier or vendor and create an unintended cost to the economy including, but not limited to a potential negative impact on small business owners.

In some instances, joint venture partners include government-owned companies that do not fall under any form of GHG reporting requirements in their jurisdictions. This represents another challenge in obtaining GHG emissions data from such joint venture partners who might not be tracking their GHG emissions or may be unwilling to provide such information.

Finally, mandated disclosure of Scope 3 emissions undermines the Commission's goals of registrants disclosing accurate, reliable, and comparative data. Given the lack of standardization and challenges with sourcing Scope 3 data, the Proposal's requirements to disclose absolute Scope 3 emissions volumes and relative intensity values would cause such disclosures to not meet the same level of precision and granularity as other quantitative information currently included in a registrant's Form 10-K. This is exacerbated by the fact that much data may need to come from third parties that are not directly subject to SEC requirements and may, as a result, not have the same sophistication of internal controls for data quality as SEC registrants. We also believe that usage and disclosure of such questionable and unreliable data could potentially impart unnecessary liability to the reporting company even when considering the safe harbor provision.

III. The proposed timeline for implementation is impractical, unworkable, and untenable

a) The proposed timeline relative to S-X financial and footnote disclosures is not realistic considering the proposed changes

Financial information to be required by the Proposal is not well defined, leading to confusion by registrants and auditors. Even if the financial information were well defined, the Proposal significantly underestimates the time needed to generate such an established understanding of required disclosures – yet registrants will be subject to liability well before that time.

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We observe with the comment period ending on June 17, 2022, there is a realistic likelihood that a final rule gets published in the 3rd or 4th quarter of 2022. Considering Thanksgiving and Christmas holidays, we would have mere weeks to position ourselves to be compliant by January 1, 2023. While the financial footnote disclosures and Scope 1 & 2 disclosure requirements are not required until we file our Form 10-K in February 2024, the reality is we need our controls processes, new systems, and training in place as of January 1, 2023, to begin data capture and accumulation for year-end reporting. This is an unreasonable timeframe, effectively requiring compliance systems to be in place for such a complex rule at the same rate as significantly simpler rule changes the Commission has previously adopted.

Current financial statement and assurance standards were developed over many years (decades even) by many different actors (FASB, PCAOB, etc.). No such body exists for these proposed emissions and financial metric disclosures. Requiring that registrants report brand new metrics in filed statements, subject to reasonable assurance, for which there are no clearly established standards for either the registrants or the assurance providers, within the Proposal's timeframe makes the Proposal itself untenable.

The Proposal would require us to develop a whole new accounting and reporting process literally within in a matter of months, if not weeks. To reaffirm, we do not have any processes currently in place that would allow us to aggregate, analyze or disclose any of the financial metrics. An important element of regulatory compliance with Commission rules involves our IT systems. We would have the shortest window ever imposed upon us to reconfigure our systems such that they could accommodate the additional detail that would then allow us to extract the necessary data. It would be an enormous undertaking to aggregate and analyze this data outside of a productionalized IT environment, much less within a properly structured system. Our feedback to the Commission is that our software vendors are not positioned to make such changes. Furthermore, the short window itself defeats the purpose of an orderly change management process (which is an integral part of any IT control environment and houses key controls in our SOX 404 framework).

For these reasons, and others we enumerated in Sections I and II of this letter, we strongly recommend that the Commission remove all Regulation S-X footnote disclosure requirements regarding financial impact metrics, expenditure metrics and financial estimates.

b) ***Scope 1 and scope 2 historical data requirements on the proposed accelerated timeline create significant concern regarding existing system capabilities and the time required for necessary enhancements to ensure accurate and meaningful reporting.***

We have significant concerns with the requirement to report Scope 1 and 2 emissions for a three-year time period starting in 2024 for fiscal years 2020 through 2023 for large, accelerated filers. As stated later in our letter we firmly believe registrants should be allowed to furnish (versus file) Scope 1 and 2 emissions on a prospective basis with a more reasonable implementation timeline (two to three years) given the process and systems complexities involved in compiling this emissions data.

Notably, and as stated by the Commission, the Proposal would require a different level and type of reporting than companies are currently required to report to other regulatory agencies. Achieving the new level and type of reporting would require developing new methods and approaches to calculating emissions that must be applied on top of methods used to comply with these other regulatory requirements. Expanding and changing data systems and processes to collect and report on GHG data will take a significant period of time. If the regulation is finalized in 3rd or 4th quarter of 2022, the proposed timing provides companies no time for design and implementation of the significant systems modifications required to start collecting data in January 2023. We anticipate all registrants will rush to their vendors at nearly the same time to begin their compliance preparation. Additionally, if companies are expected to report for up to three historical fiscal years, a comparable data set will not be available or possible to create. With such a short timeline for implementation, we predict registrants will face a significantly worse resource-constrained environment as compared to the adoption of ASC 842 (Leases) that was effective in 2019.

We remind the Commission the final rule pursuant to Section 1504 governing reporting of payments by extractive companies to governments was finalized in January 2021 and provided a 2-year transition period during where no reporting was due. We also refer the Commission to the FASB's transition periods for two of its most recent, significant standards: ASC 606 and ASC 842. ASC 606 was issued in May 2014/August 2015, with an effective date of January 2018 for us. This provided no less than 28 months for us to assess, train and implement (and this excludes any time we spent monitoring and assessing the drafting process of ASC 606, which increased our familiarity with the new standard). ASC 842 was issued in February 2016, with an effective date of January 2019 for us, giving us 34 months to implement. We believe that the emissions disclosure and assurance mandates are even more significant than the ASC 606 and ASC 842 standards.

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The Proposal may create even greater inconsistencies in reported data. Since companies will have to prepare inventories going back several years, the data will be less reliable and valuable for any stakeholder. In short, there will be little to no value to an initial disclosure containing three years of data. The Commission stated that GHG emissions data compiled for the US EPA GHG emission reporting would be consistent with the GHG Protocol standards, a registrant may use that data in partial fulfillment of its GHG emission disclosure obligations. However, that still leaves open the question of what complete fulfillment of the disclosure obligations means. This creates even greater ambiguity and more inconsistency of reporting.

The Proposal states registrants will be required to report total Scope 1 emissions separately from Scope 2 after calculating emissions from each source in the organizational and operational boundaries. The Proposal would require registrants disclose for each of the Scopes 1, 2, and 3 emissions, the emissions disaggregated by each constituent GHG. The listed GHG constituents differ from what US EPA requires and the US EPA allows a de minimis threshold for certain constituents. Here again, the Proposal changes the scope and details of a company's GHG data system and processes. The Proposal includes the following compounds as GHG emissions: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), nitrogen trifluoride (NF_3), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6). We recommend requiring that a registrant report only compounds which are relevant in the registrant's industry.

The Commission stated in the Proposal that the GHG reporting required by the US EPA only requires a registrant to report facility-level emissions, which is often a subset of total Scope 1 emissions. The Commission states that certain Scope 3 emissions may be captured in this reporting. In addition, the Commission indicates at least 17 states have GHG emission reporting requirements. The Commission provided several other differences between the reporting regimes compared to the Proposal. The differences include: i) US EPA only requires reporting for direct emissions from domestic facilities compared to the proposed rule that is not limited to US facilities and includes indirect emissions; ii) US EPA requires some gases that are not included in the proposed definition of "greenhouse gases"; iii) US EPA does not require reporting from various sectors, such as agriculture, land use, and those with annual emissions of less than 25,000 metric tons of CO_2 ; and iv) the US EPA uses a methane global warming potential (GWP) of 25 and the Proposal relies on the GHG Protocol which sites a GWP of 28. As noted in 40CFR98 Table A-1, the Reporting Program uses the 100-yr GWP of 25 for methane, consistent with the IPCC's Fourth Assessment Report (AR4) (IPCC 2007). The Inventory also uses the 100-yr GWPs from AR4, as noted on page ES-3 "to ensure that national greenhouse gas inventories reported by all nations are comparable." If the Commission uses a different GWP, such as the 28-36 range featured in AR5 or AR6, it could introduce further inconsistencies and confusion when compared with other sources like the EPA sources or UNFCCC data. We strongly encourage the Commission to use

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the 100-yr GWP from AR4 to maintain consistency with domestic and international reporting protocols and avoid introducing additional confusion. Use of a different GWP will also introduce additional compliance costs as calculations will need to be performed twice utilizing the different factor, with subsequent increases to recordkeeping and auditing costs.

The Commission has underestimated the challenges in gathering Scope 1 and 2 emissions data for a three-year time period prior to the first required reporting year. While we have voluntarily reported Scope 2 data, it is not subject to a regulatory framework like Scope 1. Many companies have been complying with the US EPA requirements for Scope 1 only. Not all companies have three years of consistent data for Scope 2 emissions and considering that many oil and gas companies operate in regions with regulated utilities they may have little ability to influence emissions from electricity usage. The Commission-proposed regulation is not completely in alignment with the US EPA regulation. Thus, an assessment, plan of action, and implementation of changes will be needed for many companies to be compliant with requirements of both agencies. Separate data and tracking systems will need to be established based on new boundaries and data sources. There can be many types and numbers of electric meters, and a single registrant may source electricity from many different utilities, leading to complexity in gathering and collating the data.

c) The availability of emissions data is mis-aligned with the 10-K filing timeline and inconsistent with EPA GHG reporting requirements.

The Proposal requires the filing of disclosures on a schedule that does not provide adequate time to gather data, complete third-party attestations, and prepare the disclosures. Further, the schedule is inconsistent with US EPA GHG reporting requirements. For example, large, accelerated filers are required to submit their climate-related disclosures with Form 10-K, 60 days after the end of the fiscal year. Sixty days is not adequate time to collect and process all the existing emissions data required by the Proposal, not considering the additional time necessary to seek data for non-operated assets, assure quality of third party provided information, integrate the assurance requirements, and disclose. While the Proposal allows a registrant to use a reasonable estimate for its fourth quarter data if actual reported data is not reasonably available, using an estimate would appear to require a registrant to perform the following steps:

1. Determine actual emissions for Q1-Q3
2. Estimate emissions for Q4
3. Provide an attestation report for Q1-Q4
4. Determine actual emissions for Q4
5. If there is any material difference between the estimate for Q4 and the actual, determined GHG emissions data for Q4, disclose in a subsequent filing and provide an attestation report

Providing a longer time period through furnished reporting of GHG emissions would avoid the multiple steps and duplicative costs required to make use of the fourth quarter estimate option. Companies may already be required to report their GHG emissions to EPA, one or more states, jurisdictions outside the U.S., and multiple voluntary disclosure frameworks. Adding a Commission requirement utilizing different GHG reporting metrics will add to the complexity and burden of GHG emissions reporting. This adds cost and timing/logistical challenges to complete such a review, which may in turn create additional risks and/or staffing needs if such constraints cannot be resolved. We note the majority of companies providing emissions information have done so later in the year than their 10-K filing. This is due in part to concerns such as those highlighted in this paragraph.

Two prominent reasons for providing a later disclosure date include the time required to receive information from utilities and the time required to receive information from third parties in the registrant's value chain. To report Scope 2 emissions, a registrant needs to receive usage information and emission factor information from its utility providers. This information is not necessarily readily available after the end of the fiscal year. To report Scope 3 emissions, a registrant may need to receive emissions information from several third parties. Current contracts may not have contemplated the required reporting of these emissions limiting a non-operating company's ability to require calculation and sharing of the data if it even exists. The result will be a reliance upon factors and estimates, which provide little actionable data to companies or investors. These third parties will need time to potentially develop a robust emissions reporting process and assemble their emissions data at the end of the fiscal year (including waiting for utility data) before providing the data to the registrant.

IV. The Commission could achieve its goals by allowing registrants to furnish, rather than file, the required information

The Commission should consider substantially less burdensome alternatives to accomplish the same goals, including removing the obligation to include the required information in Form 10-K. For example, rather than mandating that climate-change related disclosures be made through registrants' 10-K filings, registrants could be allowed to furnish certain climate-related disclosures as part of climate-related disclosure reports and existing sustainability reports. These would be provided on a consistent basis but separate and apart from a registrant's 10-K filings.

Having registrants furnish, rather than file, these reports would provide registrants with some measure of liability protection, which is essential, given the imprecise and subjective nature of the information and the difficulties of collecting it. Under the Exchange Act, liability is imposed for

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omissions or misstatements in information that is filed with the Commission. But information that is allowed to be furnished, rather than filed, is excluded from some—though not all—of the Exchange Act's liability provisions. Likewise, furnished information, unlike filed information, is not automatically incorporated by reference into a registration statement. Allowing this information to be furnished, rather than filed, would offer a significant measure of liability protection to registrants. And this approach would recognize the inherently evolving nature of how information about greenhouse gas emissions is determined.

In some instances, companies must rely upon third parties to obtain greenhouse gas data. They should not be liable for the quality of, or lack thereof, for such third-party information. Oil and natural gas companies often enter joint-venture agreements in which one party has no operational control. Therefore, unless a company can report greenhouse gas emissions using the operational control as the reporting boundary, the non-operating company would have to rely on its joint venture partner to provide it with timely and accurate greenhouse gas information. In some instances, a joint venture partner might not have the information, might be unwilling to provide it, or has no contractual duty to provide it, in which case a registrant might offer an estimate of its portion of greenhouse gas emissions in its sustainability report. Registrants should not be liable for this type of information, as it is not within the registrants' control, and it could stymie the industry's best efforts to provide complete information to its stakeholders. In contrast, furnished information could be informed by TCFD and greenhouse gas Protocol and could also rely upon industry guidance on supporting consistent reporting.

This approach of furnishing rather than filing also helps preserve the concept of materiality. As discussed in Section I above, the Commission should limit disclosure requirements to information that is material to a reasonable investor's financial decisions. Furnishing that information to the Commission would also encourage broader, more robust disclosure. As noted above, information that is considered filed is subject to liability under section 18 of the Securities Act of 1933, as well as potentially strict liability under section 11. Placing greenhouse gas-related information in these categories exposes registrants to enormous liability—especially as that information is inherently less precise, less quantifiable, and more subjective than financial data. This heightened liability over information that is, by nature, difficult to measure and report with precision will incentivize some registrants to disclose only the most limited information possible, forgoing robust discussion to avoid greater liability exposure. But if information is allowed to be furnished, rather than filed, registrants would be subject to a less-onerous liability standard. Along with the protection of safe harbors, this would incentivize registrants to provide additional information and greater context for that information.

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Furnished information is still covered by federal securities laws, as well as existing anti-fraud provisions, ensuring that the information is trustworthy, and investors can still be confident that they are receiving accurate, reliable data. Moreover, if registrants must report this information in 10-K filings, there will be different timeliness associated with Commission reporting (as discussed previously) and reports required by the EPA and other entities. Because of the difference in the reporting cycles, the data will be different and require overlapping and incongruent data-collection efforts. The end result would be different emissions data from the same company across multiple entities. Furnished reports, however, would allow for more efficient data gathering and reporting to various entities.

V. The Commission should strengthen the safe harbors

Shareholder-liability safe harbors should be well established, allowing for reasonable approaches to determining greenhouse gas emissions and new accounting standards that are either based on established industry approaches or third-party standards. Safe harbor provisions should be applicable to all information included in any specialized climate report. This approach would enable companies to discuss information that is, in some instances, highly uncertain, with the protection of safe harbors. Liability protection for this type of qualitative disclosure is important for a variety of reasons. First, there is no baseline for transition and physical climate risks for companies to compare events. Second, transition risks can be multiple and very broad, particularly in jurisdictions that lack comprehensive climate policy, such as carbon pricing, and in an environment of geopolitical uncertainty impacting demand and prices for oil and natural gas products. Finally, liability protection is necessary to avoid the chilling effect of mandatory disclosure.

VI. The Proposal will confuse investors and harm the public interest

The Proposal also would cause unintended consequences to registrants and investors. If finalized, the Proposal would likely have a chilling effect on registrants' separately published climate related sustainability reports and could lead to less information being available to the stakeholders who desire it. For example, many companies in the oil and natural gas industry, including Marathon Oil, currently publish extensive and detailed sustainability reports. But if the Proposal comes into force, companies may be reluctant to develop detailed sustainability reports, and significantly limit the amount of information and detail they disclose, to avoid any potential confusion when compared to the less qualitative and less instructive data the Proposal would require. Furthermore, the Proposal's requirement that companies disclose additional information, such as internal carbon pricing, scenario planning and related information if a company has an emission reduction target, will discourage companies from setting such targets to avoid the additional cost and liability risks caused by having to file such information.

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VII. The Commission should limit financial reporting requirements to prospective reports

The Proposal requests footnote disclosure for prior periods. As hard as it would be to purportedly develop the proposed financial metrics on a prospective basis, it is unreasonable to ask for historical information for any initial filing. We note there would potentially be relief associated with Rule 409 or Rule 12b-21 if such data may not be reasonably available to the registrant without unreasonable effort or expense. We believe most registrants would avail themselves of that relief because it is exponentially harder to capture this data for earlier years at any level. Systems are not developed or designed for this type and disaggregated level of reporting, which places an immense burden on registrants without any established benefit to shareholders. Anything we currently would generate at the disaggregated detail required would not have an established methodology that an auditor could assess against a standard and, given the number of invoices, contracts, and journal entries, would be nothing more than an estimation on such a level as to be of no value to investors. Therefore, such a requirement for any initial filing period is unworkable and should be recognized as unnecessary.

As noted, the significant costs and complexity of the Proposal's financial reporting requirements are aggravated by the Proposal's requirement for data that predates a final rule. That is because accounting systems, yet to be developed, with the level of granularity contemplated by the Proposal have not been in place, and compliance will require enormous amounts of backward evaluation. As with most rulemakings, the Commission should ensure that any final rule's requirements affect only reports prepared after the rule's effective date.

VIII. Scope of authority and First Amendment issues

In addition to the comments we have made herein, we also agree with the comments submitted to the Commission by the American Petroleum Institute (the "API") in their letter dated June 17, 2022 (the "API Letter"). While we agree with all the points made in the API Letter, of note are the API's concerns regarding the scope of the Commission's authority and concerns regarding potential First Amendment issues. We agree it is critical for the Commission to adhere to the scope of its authority as established by Congress, to adhere to established precedent regarding materiality and to carefully consider the risks associated with compelled speech. We further agree with the API the Proposal is beyond the scope of the Commission's authority, violates foundational principles regarding materiality, as that term has been interpreted by the U.S. Supreme Court, and raises significant Constitutional concerns.

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For the reasons stated above, we respectfully request the Commission withdraw the current Proposal and consider alternatives that would provide investors more useful information and better promote efficiency, competition, and capital formation. We are available to discuss our views further and provide additional clarity on any points you deem appropriate or find helpful.

Best regards,

/s/ Rob L. White
Rob L. White
Vice President, Controller and Chief Accounting Officer
Marathon Oil Corporation