MAGELLAN
MIDSTREAM PARTNERS, L.P.

June 17, 2022

Securities and Exchange Commission ("SEC")
Attn: Vanessa Countryman, Secretary
100 F. St. NE Washington, DC 20549

Re: *File No S7-10-22, The Enhancement and Standardization of Climate-Related Disclosures for Investors*

Dear Secretary Countryman,

We appreciate the opportunity to provide comments to the proposed rule regarding the Enhancement and Standardization of Climate-Related Disclosures for Investors (Securities Act Release 33-11042; Exchange Act Release 34,9447) (the "Proposal").

Magellan Midstream Partners, L.P. ("Magellan") is a publicly traded partnership that is primarily engaged in the transportation and storage of refined petroleum products and crude oil. Magellan operates across the entire middle of the U.S. with approximately 12,000 miles of pipelines and more than 100 million barrels of petroleum products storage. We take environmental, social, and governance ("ESG") issues seriously. *Moving What Moves America®* is more than just our motto. It represents who we are and our mission to safely and reliably deliver petroleum products that are essential and beneficial to everyday life. Sustainability is not new to Magellan. For more than two decades, we have focused on long-term, sustainable operations and disciplined management. Our approach to sustainability encompasses the tenets of ESG: operating and maintaining our assets to safely and compliantly protect people and the environment; supporting the communities where we live and work; and remaining disciplined in our business decisions. Magellan already routinely discusses risks of climate change and energy transition in its regular SEC reports and in its publicly available analyst meetings. Magellan also issues an annual sustainability report, and our board recently formed a sustainability committee to further focus on ESG issues.

The Proposal says its "objective is to advance the Commission's mission to protect investors, maintain fair, orderly and efficient markets, and facilitate capital formation, not to address climate-related issues more generally."[1] An investor is someone that "commit[s] money in order to earn a financial return,"[2] not a citizen concerned about climate change or an environmental advocacy group or even a passive fund manager that has no direct pecuniary interest in the relevant securities. That purported objective would be consistent with the SEC's traditional mission as authorized through the established legislative framework that undergirds our legal and economic order and which has made American capital markets the envy of and model for the developed world. However, no reasonable reading of the Proposal could reconcile it with that stated objective. On the contrary, the Proposal appears to do exactly the opposite; it appears exclusively designed to "address climate-related issues more generally."

Any public company for whom climate-related issues are of material relevance is already required by existing SEC rules to disclose and discuss such issues. If that was not clear prior to 2010, the SEC's explicit

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[1] Proposal, 9-10.
[2] "invest." Merriam-Webster.com. 2022. https://www.merriam-webster.com (16 June 2022).

directive in that year made it so, and the SEC is fully empowered to ensure compliance with its rules through enforcement actions, reviews of filings, comment letters, etc. The proposed rules, if adopted, would effectively compel all boards and management of public companies (but only of public companies) to subordinate their judgment of materiality to the SEC's and treat essentially any and all climate-related matters, including any amount of Scope I and Scope II emissions, as material, regardless of whether there is a substantial likelihood that a reasonable shareholder would consider it important[3]. This is further reflected in the proposed one percent threshold beyond which the impact on any financial statement line item of severe weather events, other natural conditions, transition activities or climate-related risks must be separately disclosed. Requiring a new lower materiality threshold specifically for climate or energy transition related matters only makes sense if information material to a reasonable investor is no longer the relevant standard, and if instead the SEC's goal is to address "climate-related issues more generally," irrespective of their materiality to investors.

Regulating climate-related issues and emissions is clearly not the SEC's purpose as established by Congress, nor is the SEC well-suited to regulate such matters. If GHG emissions should be disclosed, they should be disclosed by all entities, not just SEC registrants; if climate-related issues pose "systemic" risks, limiting disclosures around them solely to SEC registrants is an odd and indeed inadequate measure. Instead, Congress should empower some other agency to address such regulatory requirements directly, leaving the SEC to focus on its core mission of protecting investors, maintaining fair, orderly and efficient markets and facilitating capital formation. Departing from this mission to address climate issues specifically, as opposed to allowing the boards and management of public companies to address those issues when and as material to investors, would inevitably detract from that mission and from the SEC's own effectiveness as a regulator.

We do not believe the Proposal, if implemented, would accomplish the SEC's stated objective. We believe the SEC should withdraw the Proposal and either continue to rely on existing rules requiring disclosure of material information or, alternatively, prepare a more narrow and focused set of incremental reporting requirements that are focused on providing investors with information that would be considered important in making an investment decision.

Following are a few of the most troublesome issues raised in the immense 500+ page Proposal:

1. The Proposal's highly granular mandatory reporting requirements, which are a stark departure from the concepts of materiality that have long and well facilitated the SEC's mission, would make compliance painstakingly difficult and cumbersome and would flood investors with large quantities of immaterial information. While it is true that investors would have more information, the Proposal doesn't address the information overload that would result from all of the additional mandatory disclosures. The SEC's reporting requirements should not "bury the shareholders in an avalanche of trivial information - a result that is hardly conducive to informed decision making."[4] Annual and quarterly reports are already dense with information, and the Proposal's mandatory disclosures would make finding truly material information more difficult for investors. For example, the proposed requirement that public companies describe physical risks by zip code is clearly immaterial and would probably result in many pages of largely useless information. Another example is the already-noted requirement that companies report the impacts of severe weather events, etc. (which may or may not be a result of climate change) unless the aggregate impact of such events is less than one percent of any individual financial statement line item,

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[3] This is a core component of the materiality standard established by the Supreme Court in *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

[4] *Id.* at 488-489.

which, we believe, would produce excessive reporting of immaterial information thereby clouding the picture for investors rather than providing clarity.

2. The Proposal would not promote capital formation. It would, rather, inhibit capital formation by dramatically increasing the cost and complexity of becoming and maintaining status as a public company. The costs and burdens of being a public company are already high, creating a competitive advantage to private companies. Access to capital markets is important, but the benefits are not without limit and if the burdens continue to grow, more and more companies and members of management will opt out, reducing ordinary investors' access to investment options and management expertise, while making capital formation more difficult. Further, we believe the SEC has significantly underestimated the costs of compliance, which we believe would be many multiples of the projected $640,000 per year initially and would likely increase over time.

3. Reporting of Scope 3 emissions should be voluntary only or, alternatively, applicable only to issuers that have stated specific Scope 3 targets. All Scope 3 reporting would, by the very nature of the subject, be composed entirely of information about the activities of people other than the issuer. Some of the participants in our value chain may be willing and able to provide the needed information, but there can be no doubt that some would not. Issuers would therefore be left with a requirement to rely on estimates, models and outside experts to speculate about Scope 3 emissions. Compelling disclosures about third party activities is beyond the scope of the SEC's mission and likely also beyond its legal authority. Requiring reporting of Scope 3 emissions would cause a large echo chamber and exaggeration of actual emissions as a result of repeated reporting of the same emissions by multiple members of a value chain. For example, if all participants in the crude oil value chain report one molecule of oil that ultimately ends up in an automobile gasoline tank, the emissions from that molecule would be reported by, among many others, the seismic company that locates the oil in the ground, the owners of the real estate, the drilling rig contractor, the producer, the gatherer, various oil field services companies, one or more crude oil pipeline companies, pipeline service companies, one or more crude oil storage companies, one or more crude oil marketing companies, the refiner, one or more refined products pipeline companies, one or more refined product storage and terminalling companies, a trucking company, a retail gasoline station company, the automobile manufacturer, the manufacturers of all the various parts of the automobile such as tires, steel, and glass, not to mention all the suppliers of energy and other goods and services to all the companies already on this list.

We share many of the additional concerns articulated by other commenters about the breadth, potential impacts and legal authority to implement the Proposal, including, among others, whether the Proposal is within the scope of authority granted to the SEC by Congress, is enforceable based on application of the major questions doctrine, or exceeds First Amendment limitations on compelled speech.

We think the Proposal fails to achieve the SEC's stated objectives and, if implemented, would do more harm than good. We urge the SEC to withdraw the Proposal. Thank you for the opportunity to comment and for your consideration of our concerns.

Sincerely,

Douglas J. May
Senior Vice President and General Counsel