June 17, 2022

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090
Docket No. 2022-06342

Re: "The Enhancement and Standardization of Climate-Related Disclosures for Investors," 87 Fed. Reg. 21,334 (Apr. 11, 2022) (File No. S-7-10-22)

The nonprofit Partnership for Policy Integrity (PFPI) works internationally using science, legal action, and strategic communications to protect air, water, ecosystems, and the climate. Our current work focuses on forests and biomass energy. The comments we are submitting to the SEC today focus on how the SEC can formulate climate disclosure rules that will elicit transparent, meaningful, and non-misleading disclosures from companies that utilize materials from the land sector, particularly biomass from forests and croplands ("biomass") for fuel and material products.

The calculation of net GHG emissions from the land sector is more complex than that of fossil fuel emissions. Understanding this requires appreciating IPCC reporting rules. For national-level reporting, rules formulated by the IPCC and administered under the UNFCCC's framework for international carbon reporting consider both emissions and uptake ("removals") of CO_2 from the atmosphere. Removals are tracked in the Land Use, Land Use Change, and Forestry (LULUCF) sector (Figure 1).

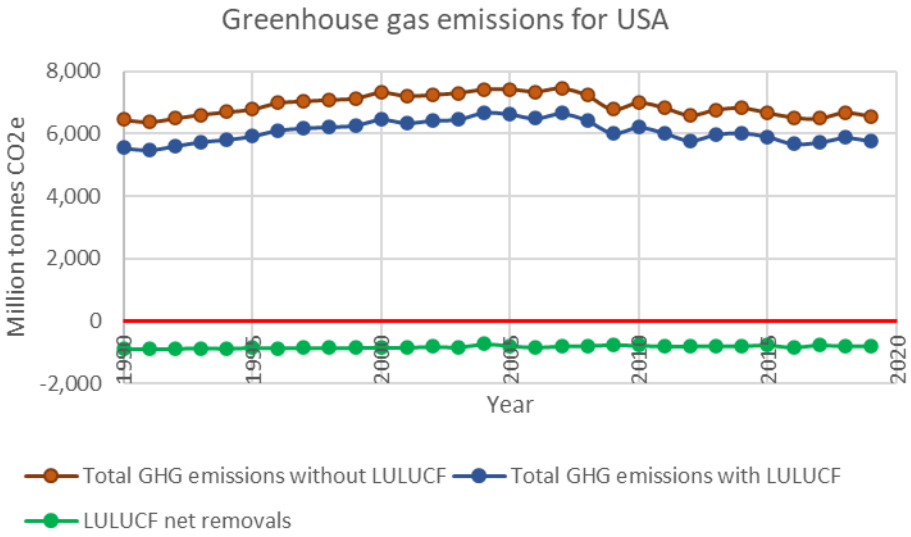

Figure 1. The USA's emissions, net removals by the land sector, and total GHG emissions, which adds LULUCF net removals to emissions.[1]

[1] https://di.unfccc.int/detailed_data_by_party

Harvesting and using biomass for fuel and materials directly emits GHG to the atmosphere, but also influences removals of CO_2 by the land sector. However, land sector reporting is simply shown as net flux that is the sum of land sector emissions plus uptake (Figure 2). Emissions from utilizing materials from the land sector are not directly reported – they are simply "rolled" into the LULUCF flux reporting, with the net flux measured as the difference between carbon stocks during subsequent measurements. If a forest is cut and burned for energy, or turned into a product, the carbon loss does not show up directly – it's instead reflected as a difference in the net flux.

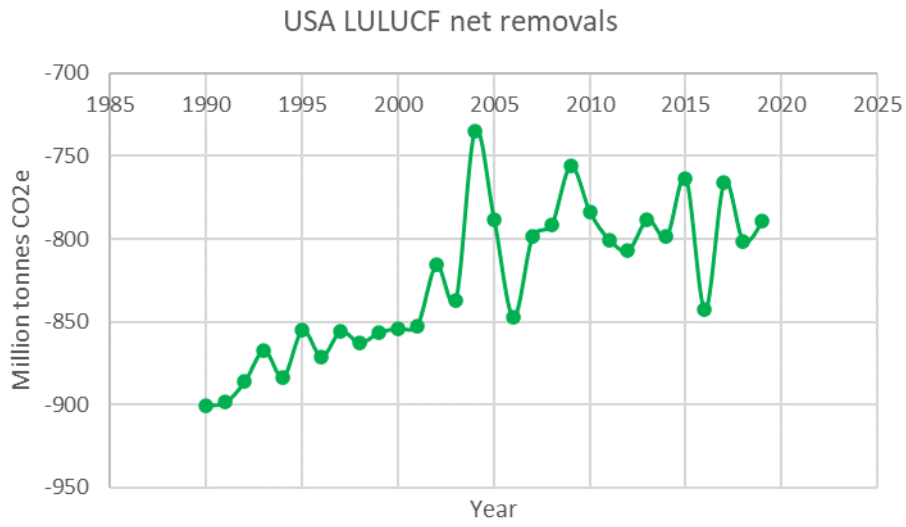

Figure 2. Zoomed-in graph of net removals by the land sector,[2] showing values have become less negative since 1990. This means the land sector is storing less carbon than it did previously.

The USA and other countries have set goals to achieve what climate scientists have stated is essential for avoiding catastrophic climate change – achieving "net zero" emissions, where emissions and CO_2 uptake are balanced as soon as possible, and no later than 2050. Many companies are also setting net zero as a goal, but there is an enormous likelihood of misleading claims and greenwashing around such targets. At the national level, the land sector currently offset a mere 12% of emissions as of 2019 (Figure 1). As Figure 2 shows, CO_2 uptake in the land sector is becoming less negative, meaning it is taking up less carbon now than it did in previous years. This trend must be dramatically reversed to have any hope of achieving net zero emissions. Since it is highly unlikely that technological solutions will become available or be scalable, this really will depend on protecting and restoring ecosystems – particularly forests.

Unfortunately, pressure on forests and other ecosystems, including croplands, is likely to increase and net storage of carbon in ecosystems is likely to continue decreasing, because in addition to all the food and wood provisioning that the land sector already provides, it is expected to provide even more raw materials to replace fossil fuels and other carbon-intensive materials (like concrete) in the future.

Net carbon flux in the land sector is simply uptake minus loss. While the math is simple in principle, the relative complexity of land sector carbon accounting has made this topic area a quagmire of

[2] https://di.unfccc.int/detailed_data_by_party

misinformation by companies that report carbon impacts of biomass use for fuels and materials. Nowhere is misinformation more rampant than in the bioenergy sector, which manufactures and burns wood and other biomass fuels for heat and power, and manufactures liquid and gaseous biofuels for transportation and other needs. The amount of biomass dedicated to energy use is massive and increasing. In Europe, where biomass burning accounts for the majority of renewable energy inputs, about half the wood harvested is already burned for energy,[3] and the continent is importing more wood fuel from the US, Canada, and other countries to supplement its supply. In the US, nearly 40 percent of the corn crop is turned into ethanol.[4]

Burning any biogenic material emits CO_2, and this CO_2 warms the atmosphere just as effectively as fossil CO_2. Bioenergy emissions *may* be offset by subsequent regrowth of biomass over time. However, since regrowth does not occur instantaneously, bioenergy net climate impact depends in part on the timeframe over which the regrowth occurs. Importantly, dedicating land to producing biomass for fuel and material feedstocks can involve a carbon opportunity cost, whereby the land, if left alone or dedicated to some other use, could sequester more CO_2 than if it is harvested for fuel. For instance, the surge of carbon caused by harvesting forest land and converting it to crops for biofuels ("direct land use change") is greater in magnitude than the fossil fuel CO_2 emissions avoided by burning biofuels. Even if the land was already growing crops, replacing food crops with energy crops may lead to land being cleared elsewhere to grow food ("indirect land use change"), since the demand for food does not decrease. Such risks are well-established, which is why so many renewable energy standards do not recognize or grant credits for biofuels where risk of direct or indirect land use change exists. Less well-understood, however, is that harvesting forests for fuel and feedstock even *without* permanent land-use change (i.e., the forest is replanted, or allowed to regenerate naturally after logging) creates an identical surge of CO_2 to the atmosphere, and because most forests regrow only slowly, the cumulative net emissions impact on the atmosphere can be similar to permanent loss of forests over decades to centuries.

The net carbon impact of bioenergy also depends on additional "lifecycle" emissions of bioenergy, including soil carbon loss, fertilizer inputs, and CO_2 emissions from fossil fuels burned during biomass cultivation, harvest, processing, and transport. Also relevant for the net emissions impact of bioenergy is that biomass tends to be a very inefficient fuel, thus direct emissions per unit energy generated from burning biomass tend to be higher than from fossil fuels. Regarding use of forest wood for fuel, burning biomass emits more CO_2 per unit energy than fossil fuels, and burning wood emits CO_2 quickly while trees regrow slowly. This means that overall net emissions from a continuously operating biomass power plant can significantly increase emissions over those from a same-sized coal or gas plant for decades to more than a century. The impact has been summarized in a number of scientific papers and models; for an interactive model, see one from the Natural Resources Canada.[5]

Despite this physical reality, companies producing and burning biomass for renewable energy – and thereby benefiting from billions worldwide in renewable energy subsidies – often exploit an accounting convention for biogenic carbon arising under IPCC reporting conventions, whereby emissions from burning biomass are counted in the LULUCF sector (as an impact on the net carbon sink), and therefore, to avoid double-counting, the emissions from burning the biomass are counted as "zero" in the energy

[3] https://forestdefenders.eu/wp-content/uploads/2021/03/JRC-study-biomass-study-overview_final.pdf
[4] https://www.ers.usda.gov/topics/crops/corn-and-other-feedgrains/feedgrains-sector-at-a-glance/
[5] https://apps-scf-cfs.rncan.gc.ca/calc/en/bioenergy-calculator

sector. The exploitation of this accounting convention arises when companies misleadingly claim that use of biomass *actually has* "zero" emissions, or is "carbon neutral." In response to such claims, the IPCC has explicitly warned that "*the approach of not including these [bioenergy] emissions in the Energy Sector total* ***should not be interpreted as a conclusion about the sustainability or carbon neutrality of bioenergy***."[6]

Companies nonetheless continue to come up with "creative" carbon accounting approaches that obscure the actual carbon impact of bioenergy. For instance, while the net balance of carbon flux from the land sector is the sum of emissions plus uptake, companies are capable of abusing this, and do. Enviva, a wood pellet company that we investigated and reported to the SEC,[7] calculates net emissions from wood pellets as "zero" by using different sized regions for calculating emissions and uptake. Trees that are harvested are counted as occurring on a small land-base, while forest carbon uptake is counted over a larger land base. The net sum of uptake minus emissions, unsurprisingly, does not reflect the actual carbon impact of harvesting and burning trees for energy. It is basics like this – that emissions impacts need to be calculated on a standardized land base – that the SEC must include in its Scope 3 rules.

Current treatment of biogenic accounting does not protect investors

The Commission states "*there is a lack of consistency, comparability, and reliability in those data that our proposal seeks to address,*" and that "*registrants often provide information outside of Commission filings and provide different information, in varying degrees of completeness, and in different documents and formats—meaning that the same information may not be available to investors across different companies.*"

Arguably, nowhere is this more true than for the issue of how companies report biogenic emissions. As incentives for renewable energy have increased, there has been an epidemic of misleading and blatantly false statements by certain biomass producers and consumers. PFPI has been asking the SEC (and FTC) to pay attention to this problem for some time.

- We first submitted a report on misleading claims by Dominion, Southern Company, and Covanta regarding biomass.[8]
- We submitted a report to the Federal Trade Commission identifying how 17 bioenergy companies were making misleading claims to consumers.[9]

[6] IPCC Frequently Asked Questions on Energy, Question 2-10 "According to the IPCC Guidelines CO_2 Emissions from the combustion of biomass are reported as zero in the Energy sector. Do the IPCC Guidelines consider biomass used for energy to be carbon neutral? https://www.ipcc-nggip.iges.or.jp/faq/FAQ.pdf

[7] https://www.pfpi.net/wp-content/uploads/2016/03/Report-to-SEC-on-Enviva-March-14-2016.pdf

[8] Booth, M. S. and K. Bitov (2013). Analysis of risks and corporate disclosures regarding environmental and climate considerations in the biomass power sector. Pelham, MA, Partnership for Policy Integrity. http://www.pfpi.net/wp-content/uploads/2013/11/PFPI-report-to-SEC-on-bioenergy-Nov-20-2013.pdf

[9] Bitov, K. and M. S. Booth (2014). Climate of Deception: Why electricity consumers who care about global warming and air pollution need FTC protection from biomass industry greenwashing. . Pelham, MA, Partnership for Policy Integrity. http://www.pfpi.net/wp-content/uploads/2014/07/PFPI-report-to-FTC-on-biomass-power-greenwashing.pdf

- We submitted a detailed report to the SEC on wood pellet manufacturer Enviva's misleading claims and failure to disclose material information[10]
- And finally we submitted a petition to the SEC for a rulemaking[11]on how companies should be prevented from making misleading claims about climate and biogenic emissions. In the report accompanying the petition, we surveyed 10 companies, finding that a range of methodologies, and sometimes no methodology, were deployed to claim carbon benefits of using biogenic materials.

The Commission notes, "*the information provided outside of Commission filings is not subject to the full range of liability and other investor protections that help elicit complete and accurate disclosure by public companies*." But we found that even the information being provided by these companies *within* Commission filings was misleading. We believed that there was more than enough justification for taking action against companies for their misleading claims based on the SEC's 2010 disclosure rules. However, the SEC did not take action and in the time since we filed the first complaint, the biomass energy and most particularly the wood pellet industry has exploded in size. The wood pellet industry in the US is now responsible for felling millions of trees per year that are burned for energy even as the publicly traded companies manufacturing and combusting this fuel falsely claim it is carbon neutral.

Some of these problems have arisen because of European and UK policies that have encouraged importing and burning wood for renewable energy, even while policymakers tolerate false claims as to the "climate benefits" of burning trees for energy. With partners, we have engaged with these policies directly by filing a suit against the European Union for its promotion of biomass for renewable energy[12]; by filing a complaint at the OECD[13] under that body's guidelines for multinational enterprises on responsible business conduct (targeting a company, Drax, operating in the UK, US, and Canada); and preparing to file a case against the European Union over its treatment of bioenergy in the so-called "Green Finance Taxonomy."[14]

While the current SEC proposal encompasses some of the issues we raised in those reports and legal cases, we are concerned that the Scope 3 rules as proposed may repeat and reinforce past approaches that have resulted in extremely misleading statements to investors and the public. It's urgent that this not happen and that the SEC not underestimate the importance of correctly disclosing land sector emissions. As the TCFD points out, "*According to the Intergovernmental Panel on Climate Change (IPCC), agriculture and forestry is responsible for 'just under a quarter of anthropogenic GHG emissions mainly from deforestation and agricultural emissions from livestock, soil, and nutrient management. Anthropogenic forest degradation and biomass burning (forest fires and agricultural burning) also represent relevant contributions.' (IPCC. "Agriculture, Forestry and Other Land Use (AFOLU)," In:*

[10] Booth, M. S. (2016). Carbon Emissions and Climate Change Disclosure by the Wood Pellet Industry – A Report to the SEC on Enviva Partners LP. Pelham, MA, Partnership for Policy Integrity. https://www.pfpi.net/wp-content/uploads/2016/03/Report-to-SEC-on-Enviva-March-14-2016.pdf

[11]Horwitt, D. and M. S. Booth (2019). Petition to the Securities and Exchange Commission for a rulemaking on biogenic carbon claims. Pelham, MA. https://www.pfpi.net/wp-content/uploads/2019/02/SECPetitionAccurateBiogenicCarbonReporting2.27.2019.pdf

[12] https://eubiomasscase.org/the-case/

[13] https://www.pfpi.net/wp-content/uploads/2022/03/2021-10-21_OECD-complaint_Drax-Group-plc_FINAL-as-filed.pdf

[14] https://forestdefenders.eu/environmental-coalition-challenges-sweeping-eu-finance-policy-seeking-to-block-investment-in-bioenergy-unsustainable-forestry/

Climate Change 2014: Mitigation of Climate Change, 2014. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change)."[15]

As global fossil fuel emissions fall, the relative importance of the land sector emissions will only increase – especially since there is an increasing trend toward replacing not just fossil fuels with biomass, but using wood and other biomass feedstocks to replace carbon-intensive and fossil-based feedstocks in other sectors, such as the construction industry and the chemical sector. Companies exploiting land-sector for materials tend to make extraordinary claims about the emission reductions from the "bioeconomy," many of which are not backed by science or which are directly contradicted by science. Accordingly, it is extremely important to get these climate rules right, so that they result in disclosures that are accurate and non-misleading. However, while the Commission has devoted a fair amount of discussion to the supposed difficulties of characterizing Scope 3 emissions, there is almost no discussion of the importance of correctly disclosing land sector emissions. Going forward, we strongly urge the Commission to take this issue seriously and craft rules that result in accurate, non-misleading disclosures of land sector carbon impacts.

Regarding "Climate-related opportunities"

A key aspect for companies that utilize biomass as a supposedly "low-carbon" material that can replace fossil fuels and other carbon-intensive materials is that they actually greatly *benefit* from climate change. Some companies might not even exist but for the threat of climate change. Thus, while physical climate risks are obviously a major consideration for any company sourcing materials from the land sector, many companies are nonetheless experiencing the opposite of "transition risk," since worldwide, there is continually increasing demand for supposedly climate-friendly biogenic materials. When policies do not count biogenic emissions properly, treating them as "zero" or "carbon neutral," companies benefit from making misleading statements about climate benefits in line with those policies – even as their activities in fact worsen climate change.

This situation is somewhat outside the regular problems that the SEC seeks to solve. In these cases, companies may benefit financially by promoting misinformation. Thus investors also "benefit" – at least until regulatory or reputational risk catches up.

The Commission tangentially confronts this dilemma, asking, "*Should we define climate-related opportunities as proposed? Should we permit a registrant, at its option, to disclose information about any climate- related opportunities that it is pursuing, such as the actual or potential impacts of those opportunities on the registrant, including its business or consolidated financial statements, as proposed? Should we specifically require a registrant to provide disclosure about any climate-related opportunities that have materially impacted or are reasonably likely to impact materially the registrant, including its business or consolidated financial statements?* ***Is there a risk that the disclosure of climate-related opportunities could be misleading and lead to ''greenwashing''? If so, how should this risk be addressed***"

The question of how to avoid greenwashing is particularly salient. Transition opportunities for these companies are largely based on the fact that most international climate mitigation and renewable energy policies tend to treat bioenergy as having "zero" emissions, and further treat replacing certain carbon-

[15] https://assets.bbhub.io/company/sites/60/2021/07/2021-TCFD-Implementing_Guidance.pdf page 67

intensive materials with wood as having a climate benefit, even when the science of carbon accounting shows this is not the case.[16] For instance, emissions trading programs that require companies to pay fees to emit GHGs typically exclude emissions from burning biomass. This means that a coal plant can avoid carbon fees it was previously paying by switching to burning trees, instead - even though in reality, that power plant is now emitting more CO_2 than it was when it burned coal.

Given the criticality of preserving and restoring forests and other natural systems for the mitigation of climate change and the preservation of life on earth, most transition "opportunities" in the bioeconomy are in fact nothing *but* greenwashing. This has been very poorly recognized by external carbon emissions metrics, however. For instance, the TCFD seems "all in" on opportunities in the bioeconomy: "*Disclosures, therefore, should focus on qualitative and quantitative information related to both the group's policy and market risks in the areas of GHG emissions and water,* ***and its opportunities around carbon sequestration, increasing food and fiber production****, and reducing waste, including… Opportunities that* ***capture shifts in business and consumer trends toward food and fiber products, processes and services that produce lower emissions*** *and are less water-/waste intensive while maintaining adequate food security (e.g., bioplastics, GMOs, new uses for wood/animal byproducts)."* [17]

There is rarely any discussion or means of discriminating about the relatively few "opportunities" that actually yield a climate benefit. For instance, we submitted detailed comments to SASB[18] on how that institution is papering over the actual impacts of bioenergy and biomass use, and failing to use the science at its disposal in a meaningful way.

Overall, we are concerned that the current focus on climate change impacts to companies, and a framework arising from this, fails to capture the real risks to investors from such enterprises: the risk of being mislead by false claims – essentially, "greenwashing," and the impact that has on the planet (where the investors live!). Whatever the *current* benefit to companies from taking advantage of pro-bioeconomy policies and incentives, we believe it is nonetheless "material" to the interests of investors to not be misled about the actual climate and ecosystem impacts of exploiting the land sector for materials. It may be somewhat intangible, but there is more at play here than just the bottom line – "green" investors want to invest in companies that *actually* help mitigate climate change, not just pretend to, even if pretending to is lucrative. We would thus argue for a more expansive interpretation of materiality to include the right of investors to not be misled.

The Commission should set mandatory disclosure protocols for Scope 3 emissions

How to compensate for the failure of external metrics to properly address biogenic carbon impacts? The answer is for the SEC to formulate its **own independent set of disclosure rules for land-sector accounting** that are simple, transparent, and avoid making the mistakes that so many so-called disclosure metrics continue to make. Unfortunately, the current proposal intends the opposite. The Commission states that the Greenhouse Gas Protocol is currently exploring a new methodology for land sector carbon reporting in Scope 3 ("*We recognize that the methodologies pertaining to the measurement of GHG emissions, particularly Scope 3 emissions, are evolving*"). However, the SEC's response to this is unfortunately to let companies "choose their own adventure" when doing Scope 3

[16] Leturcq, P. (2020). GHG displacement factors of harvested wood products: the myth of substitution. Scientific Reports **10**(1): 20752. At https://doi.org/10.1038/s41598-020-77527-8.
[17] https://assets.bbhub.io/company/sites/60/2021/07/2021-TCFD-Implementing_Guidance.pdf page 68
[18] https://www.pfpi.net/wp-content/uploads/2018/01/PFPI-comments-to-SASB-Jan-31-2018-1.pdf

reporting ("*While we expect that many registrants would choose to follow the standards and guidance provided by the GHG Protocol when calculating their GHG emissions, the proposed rules would not require registrants to do so. Allowing for some flexibility in the choice of GHG emissions methodologies would permit registrants to adapt to new approaches, such as those pertaining to their specific industry, as they emerge*.")

This approach represents a serious mistake that risks reinforcing and worsening existing problems in land sector reporting. As explained above, we submitted an entire report to the SEC on the urgent need for a consistent methodology for land sector carbon reporting. It's been sitting in the SEC's docket of submitted petitions since 2019. We don't see any evidence, from what is proposed here, that the SEC has even read it, much less taken onboard its central message: that it's a Wild West of biogenic carbon accounting methodologies out there, and standardization is urgently needed.

What information should the Commission require? The proposal to rely on methodologies set by the Greenhouse Gas Protocol is understandable, but in fact the new GHGP methodology for land-sector carbon reporting may actually represent a threat to the integrity of Scope 3 reporting under the SEC proposal. First, it is not clear when the GHGP process will be completed, raising the possibility that the SEC's rules might go into effect before the GHGP methodology is approved. Second, the GHGP panel currently engaged in revising the methodology is heavily influenced by important biomass industry and wood pellet companies, including Drax and Enviva, as well as other wood product industry representatives who are dedicated to portraying forest harvesting as a net benefit for the climate. It seems possible, even likely, that these "stakeholders" will not sign off an any methodology that reveals the true extent to which logging forests contributes to land sector emissions. The current draft methodology seems at risk for including approaches that have led to so much obfuscation of climate impacts in the past. We advise therefor that the SEC adopt its own independent core set of disclosure principles for land sector carbon, such as those we offered some at the end of our petition to the SEC.[19]

The Commission should require Scope 3 reporting for every company

The Commission asks a number of questions about the reporting requirement for Scope 3 emissions. The default position is that "*To balance the importance of Scope 3 emissions with the potential relative difficulty in data collection and measurement, the proposed rules would require 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*."

This is a mistake. If only to ensure the consistency and comparability that the Commission says it wants, all companies should be required to report on all three scopes. Leaving it up to companies to decide what a reasonable investor would consider material is not in line with the Commission's stated objective of increasing transparency and comparability among companies. Further, given that many company efforts to decarbonize may increase reliance on of biogenic materials and fuels, and given that GHG impacts of these will be recorded under Scope 3, it is important to establish a common baseline for all companies starting at the same time.

[19] https://www.pfpi.net/wp-content/uploads/2019/02/SECPetitionAccurateBiogenicCarbonReporting2.27.2019.pdf

The Commission itself makes an important point in citing studies positing that "*firms may also be outsourcing emissions abroad to exploit investors' current difficulties in assessing the firm's carbon emissions through imports along the upstream supply chain. By requiring the disclosure of Scope 3 GHG emissions, the proposed rules would make it more difficult for non-SRC registrants to avoid investors' scrutiny by outsourcing all or part of their activities abroad*."

Some companies that have not historically relied on biogenic materials may start to do so, as opportunities for biogenic products grow. For instance, fossil fuel companies like BP, that now make liquid biofuels, have become heavily invested in agriculture. Other types of companies have arisen in response to a demand for biogenic fuels. For instance, biomass burning was historically primarily done by the paper and sawmill industries, which burned their own wastes. In the last 15 years, however, the wood pellet industry has arisen and is now responsible for consuming millions of tonnes of forest wood in the US. Forest wood is also increasingly being eyed as a feedstock for liquid biofuels.

Regarding the difficulty of Scope 3 reporting, presumably the degree of difficulty increases commensurate with the accounting task. If a company has negligible Scope 3 emissions, it should generally be able to swiftly determine this, and compile information with a minimum of trouble. Overall, the heuristic value of requiring Scope 3 emissions reporting to be done in a consistent way across the board outweighs the additional work it imposes.

As for a threshold triggering reporting, the document notes, "*When assessing the materiality of Scope 3 emissions, registrants should consider whether Scope 3 emissions make up a relatively significant portion of their overall GHG emissions. While we are not proposing a quantitative threshold for determining materiality, we note that some companies rely on, or support reliance on, a quantitative threshold such as 40 percent when assessing the materiality of Scope 3 emissions*."

It's alarming to see the Commission even mentioning such a high percentage. This is entirely inconsistent with financial thresholds that are sometimes used for determining financial materiality. We quote here from comments on bioenergy we submitted to SASB in 2018, concerning materiality[20]:

"Many registrants and auditors use as a rule of thumb a quantitative definition that defines as material any data with financial impact exceeding 5%-10% of net income. Although the 5% threshold is widely used, the SEC points out that this materiality definition has no basis in accounting literature or law. On the contrary, under the SEC's pronouncement on materiality, Staff Accounting Bulletin 99 (SAB 99) clarified that ***qualitative information can be material****, and that "exclusive reliance on certain quantitative benchmarks to assess materiality in preparing financial statements and performing audits of those financial statements is inappropriate; misstatements are not immaterial simply because they fall beneath a numerical threshold."*

The Bulletin provided several cases in which disclosures that fall beneath the 5% threshold can in fact be material, such as when the disclosure refers to a company's regulatory compliance, or if it relates to an important portion of the registrant's business operations. Both of these criteria are relevant to bioenergy, and to the companies we evaluated in prior analyses sent to the SEC.

[20] Page 6 at https://www.pfpi.net/wp-content/uploads/2018/01/PFPI-comments-to-SASB-Jan-31-2018-1.pdf

The Financial Accounting Standards Board provided another definition of materiality in its Statement of Financial Accounting Concepts No. 2 (FAS 2), which takes a relatively expansive view. The FAS 2 states that a disclosure should be made if its omission or correction would probably change or influence "the judgment of a reasonable person relying upon the report."

In 1976, the Supreme Court, in TSC Industries Inc. v. Northway, Inc.[21] *mirrored the FAS 2's definition by concluding that a disclosure is material if there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information available." In addition, the Court maintained that a disclosure is material if "there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote." In Basic, Inc. v. Levinson, the Court concluded that materiality must be based on "delicate assessments of the inferences a 'reasonable shareholder' would draw from a given set of facts and the significance of those inferences to him."*[22]

Additionally, in accordance with the importance of land-sector accounting, the Commission should not include a phase-in period for Scope 3, but instead require it immediately. Nor should the Commission include a "safe harbor" provision for Scope 3. There is already too much misrepresentation occurring in land sector reporting; a safe-harbor provision will simply assure companies that they can continue to make misleading statements with impunity.

The Commission should define "short, medium, long" timeframes

The commission states, "*As proposed, a registrant would be required to describe how it defines short-, medium-, and long-term time horizons, including how it takes into account or reassesses the expected useful life of the registrant's assets and the time horizons for the registrant's planning processes and goals. We have not proposed a specific range of years to define short-, medium-, and long-term time horizons in order to allow flexibility for a registrant to select the time horizons that are most appropriate to its particular circumstances*."

This is a mistake. The fewer things that are left up to companies to define for themselves, the better for transparency and comparability. Given the immediacy of need reduce emissions, and also the reality of human time-scales, the Commission should define "short" as 1 – 5 years, "medium" as 10 – 20, and "long" as 20 – 50, then introduce a new category for periods longer than 50 years, or as defined by the registrant. It's less important what the specific timeframes are, and more important that they be non-overlapping and standardized.

Companies must disclose carbon offsets and renewable energy credits if used

The climate disclosure rules must indeed require companies to disclose use of offsets and renewable energy credits (RECs) they use as part of their climate-related business strategy. However, even more information is needed. It is possible that a company can be purchasing offsets associated with growing trees (assumed to sequester carbon and thus offsets some portion of the company's emissions) while simultaneously purchasing RECs that are associated with *burning* trees for energy – and yet this energy would likely be treated as "zero-emissions" under current policies. Many states and renewable energy

[21] TSC Industries, Inc v Northway, Inc, 426 US 438, 449 (1976).

[22] Basic Inc. v Levinson, 485 US 224 (1988).

programs also allow garbage incineration, as well as wood-burning, to qualify as renewable energy – another technology that is clearly not "zero carbon." The SEC can not wait for reform and consistency of public policies – it must set a science-based disclosure policy that acknowledges "renewable" energy is not necessarily the same as "zero carbon" energy, and accordingly require companies to disclose the *type* of renewable energy behind RECs that they claim as contributing toward their emission reduction goals. (For more on how bioenergy is misleadingly included in voluntary REC programs, see our report to the FTC[23]).

Thank you for the opportunity to comment.

Mary S. Booth, PhD
Director, Partnership for Policy Integrity

[23] https://www.pfpi.net/wp-content/uploads/2014/07/PFPI-report-to-FTC-on-biomass-power-greenwashing.pdf