Vanessa A. Countryman June 17, 2022
Secretary
Securities and Exchange Commission ("SEC", "the Commission")
100 F Street NE
Washington, D.C. 20549-1090

17 CFR 210, 229, 232, 239, and 249
[Release Nos. 33-11042; 34-94478; File No. S7-10-22]
RIN 3235-AM87
"The Enhancement and Standardization of Climate-Related Disclosures for Investors"
Proposed Rule[1]

Submitted electronically

Dear Ms. Countryman,

Introduction: a statement of support (with a few caveats)

The Institute for Agriculture and Trade Policy (IATP)[2] appreciates the opportunity to comment on the Proposed Rule (PR). We congratulate and thank the SEC for proposing a fair and comprehensive rule that defines and identifies climate-+related risks for the purpose of determining their financial impacts on SEC registered companies. As the PR states,

> A central focus of the Commission's proposed rules is the identification and disclosure of a registrant's material climate-related risks. The proposed rules would require a registrant to disclose any climate-related risks reasonably likely to have a material impact on the registrant's business or consolidated financial statements . . . As proposed, "climate-related risks" means the actual or potential negative impacts of climate-related conditions and events on a registrant's consolidated financial statements, business operations, or value chains, as a whole." (PR, pp. 56-57)

This central focus, sustained throughout both the PR's explanatory text and the text amending Regulations S-K and S-X, makes crystal clear that the PR is not a "back door" environmental rule that extends SEC authorities to environmental objectives and means to achieve those objectives, over which the Commission does not have authority. If registrants have questions

[1] https://www.sec.gov/rules/proposed/2022/33-11042.pdf
[2] The Institute for Agriculture and Trade Policy is a 501(c)3 non-profit organization headquartered in Minneapolis, MN, with offices in Washington, D.C. and Berlin, Germany. IATP has commented on a few dozen of Commodity Futures Trading Commission rulemakings since 2010. IATP is a member of Americans for Financial Reform (AFR) and has signed on to several AFR letters to the SEC. However, this is just our second independent letter to the SEC. Our first letter responded to SEC Acting Chair Allison Herren Lee's March 15, 2021, request for public input regarding climate related financial disclosures. IATP contributed to the emissions offset working group for the AFR et al. mega-letter on this Proposed Rule.

about what constitutes “materiality” in relation to climate-related risks, they can consult the “SEC Staff Accounting Bulletin No. 99: Materiality,”[3] with which registrants are familiar. The PR usefully provides citations to Supreme Court rulings, according to which doubts about whether a particular risk is “material” are to be resolved in favor of disclosure of the risk to the investor. (p. 64, footnotes 209 and 210, footnotes 445 and 446, p. 162) Clearly, the SEC has the authority to require climate-related financial disclosures and these disclosures, as proposed, are material to the registrant’s consolidated financial statements and business operations.

The PR, if adopted and complied with, will provide investors, investment advisors and broker dealers (hereafter “investors”) with the quality and granularity of comparable climate-related financial disclosures that investors have requested from companies but have not received. (PR, pp. 27-32, et passim) We support the Commission’s decision to propose to update current SEC disclosure rules and climate disclosure guidance, rather than propose a separate climate related disclosure rule. (Question 1) This decision underscores the long-established authority of the SEC to require registrants to disclose quantitative information in financial statements and narrative information on business strategy, model and outlook: Climate-related financial disclosure is just one more kind of disclosure, not a sui generis invention of an “overreaching” regulator.

A recent letter to the SEC from 30 professors of securities regulation and law documents “Congress’ broad delegation to the Commission of the power to determine what disclosure is necessary or appropriate in the public interest, or for the protection of investors, or to promote fair dealing in securities traded on the U.S. capital markets.”[4] While IATP’s main focus is not securities law and regulation, we are persuaded by experts that the Commission has the authority to mandate climate-related financial disclosures.

By requiring issuers to file expenditures, costs and other financial data related to the registrant’s physical and transition risks in a comprehensive and comparable format, investors will be able assess the impact of those risks on the registrant’s balance sheet and other financial statements. By requiring registrants to narrate in the 10-K and 10-Q forms the governance structure, business strategy and outlook for registrants’ progress in managing their identified climate-related financial risks, investors will have important and relevant information as they conduct overall due diligence to make reasoned investment decisions. We agree that the technical challenges of developing climate related disclosures require a phase-in period to the effective compliance date, as the Commission proposes. (PR, p. 46)

[3] https://www.sec.gov/interps/account/sab99.htm

[4] Fisch, Jill E. and Georgiev, George S. and Nagy, Donna M. and Williams, Cynthia A., Comment Letter of Securities Law Scholars on the SEC’s Authority to Pursue Climate-Related Disclosure (June 6, 2022), at 2. Available at SSRN: https://ssrn.com/abstract=4129614 or http://dx.doi.org/10.2139/ssrn.4129614

Because registrants' greenhouse gas (GHG) emissions are an important benchmark from which to estimate the costs and expenditures of managing registrants' transition risks, we agree with the Commission's recommendation that registrants report GHG emissions according to the Greenhouse Gas Protocol (PR, pp. 37-38) or other standardized GHG data collection and aggregation methodologies, such as that of the U.S. Environmental Protection Agency (EPA). The Commission should not permit registrants to report GHG emissions data by reference to another report. (Question 6, p. 54) We agree that "requiring a registrant to include all of the proposed climate-related disclosures in a separate, appropriately captioned section, while precluding a registrant from incorporating by reference some or all of the climate-related disclosures, [would] promote comparability and ease of use of the climate-related information for investors." (Question 6, p. 54) Investors should not have to chase from one registrant report to another to compile a wholistic understanding of the financial consequences of a registrant's climate-related physical risks, transition risks and transition plan or business strategy to manage those risks.

IATP agrees with the PR provision that allows registrants to report climate-related financial opportunities in their products and services, per the widely accepted and used voluntary reporting framework of the Task Force on Climate Related Financial Disclosures (TCFD), on which the PR is partly based. (Question 3 and PR, pp. 35-37) However, the option to disclose climate-related financial opportunities should be narrated in the context of the disclosure of the registrant's plan to manage its transition risk, as the SEC proposes. (Question 49, p. 109) We agree with the Commission's proposed definition of "transition risk" (Question 42) and the elements proposed for transition plan disclosure, particularly the disclosure of how registrants will mitigate physical risks related to energy, land and water use. (Question 47, p. 108)

IATP does not believe that the Commission's proposal to require updating of the transition plan every fiscal year would act as a disincentive to the adoption of a transition plan, if that plan and its updating allow registrants to report their climate-related financial opportunities to investors. (Question 50, p. 109) The Commission asks whether the PR should include in transition plan disclosures a separate safe harbor from litigation beyond what is already provided for forward looking statements. (Question 51, p. 109) A plausible rationale for adding this additional safe harbor is that registrants protected by this and other safe harbors proposed will disclose higher quality information that is more readily usable for investor decision making. However, unlike the proposed safe harbor for Scope 3 emissions reporting (more on this later), an independent audit cannot provide reasonable assurance about the accuracy and comprehensiveness of a forward-looking transition plan disclosure. Emissions estimates, sourced in part from publicly available date, according to standardized protocols, are auditable. Transition plans, whose efficacy depends on numerous forward-looking factors specific to the registrant, cannot be audited with reasonable assurance or even with limited assurance. Therefore, IATP advises against including a transition plan disclosure safe harbor.

Investors can judge the likelihood that the revenues from climate-related opportunities will in the near and/or medium term exceed the costs of climate related risk management. We agree with the Commission's proposal that registrants be required to report expenditures incurred to mitigate and adapt to climate-related risks but that the reporting of expenditures on climate-related opportunities be optional for registrants that choose to disclose those opportunities. Expenditures on climate risk management are finite in the fiscal year, but forward-looking expenditures on futures products and services may or may not result in greater revenues from products and services. (Question 75) There is a risk that the optional reporting of expenditures on climate-related opportunities could result in "greenwashing." (Question 18) But registrant claims about climate related goods and services, which investors determine to be exaggerated or unsupported, will act as an investment deterrent and might increase the registrant's climate-related litigation or reputational risk and costs.

We would also add a brief comment on disinformation about the PR and how the revised PR might help dispel at least some of that disinformation. Both Congressional and agribusiness (represented by commodity group members) opponents of the PR have willfully mischaracterized it as requiring farmers and ranchers to report their emissions and other "personal information" of their operations to the SEC.[5] IATP refuted a similar mischaracterization, conveyed in an April 6 letter of 11 Republican Senators to President Joe Biden, soon after the letter was reported in *Farm Futures*.[6] However, a disinformation campaign about the PR targeted at farmers and ranchers will likely be among those campaigns that provide opponents with the appearance of grassroots opposition.[7]

We advise the SEC to emphasize in the PR's explanatory text that its Scope 3 reporting requirements apply only to SEC registrants. They do not apply to farmers or ranchers, even those who directly or indirectly, through contracts or "captive supply" arrangements, commit their production to SEC registrants' value chains. This reporting example should emphasize that Scope 3 emission estimates from registrants' upstream and downstream activities are based on industry wide or national averages (PR, pp. 172-173), e.g., EPA estimated averages for per animal unit production of methane from Concentrated Animal Feeding Operations, and not on data from individual farms and ranches.[8]

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[5] "SEC Proposed Climate Rule Could Intensify Farm and Ranch Consolidation," American Farm Bureau, May 6, 2022, and National Pork Producer Council lead commodity group letter, April 26, 2022. https://nppc.org/wp-content/uploads/2022/05/2022-04-26-Agricultural-Request-for-Extension-of-Time-of-SEC-Climate-Reporting-Rules.pdf

[6] Steve Suppan, "Q&A: The SEC's proposed rule on the disclosure of climate-related financial risk," Institute for Agriculture and Trade Policy, April 18, 2022, https://www.iatp.org/blog/202204/qa-secs-proposed-rule-disclosure-climate-related-financial-risk

[7] Kristoffer Tigue, "Online Disinformation Uses Culture Wars to Delay Climate Action, Study Says," *Inside Climate News*, June 10, 2022.

[8] Ben Lilliston, "New EPA data confirms role of factory farms in increasing agricultural emissions, Institute for Agriculture and Trade Policy, March 3, 2022.

Of course, EPA estimates cover only a registrant's U.S. emissions, so in addition to recommending registrant use of the Greenhouse Gas Protocol, the Commission should include the internationally used U.N. Food and Agriculture Organization's (FAO) Global Livestock Emissions Assessment Model (GLEAM)[9] as a recommended data source for meat and dairy processing and related agribusiness registrants. If agribusiness and food processing registrants do not report their Scope 3 emissions, investors will not be able to analyze the scope of their registrant risks and the feasibility of registrant business strategies to reduce and manage those risks.

Overview (with an agribusiness and food processing focus)

IATP is not an investor. Nevertheless, we have some expertise in the agribusiness reporting of Scope 3 emissions and in the trading of land-based emissions offset credits that may be of use to the Commission as it revises the PR for adoption. The narrative organization of our letter is first to respond to some of the PR's questions and illustrate our answers both as they concern cross-sectoral registrant reporting and occasionally as they concern agribusiness registrant reporting. This latter concern is well justified by survey data from a 2021 report commissioned by Ceres:
As of January 2022, only 21 out of the 50 highest greenhouse gas emitting North American food companies tracked by Ceres' Food Emissions 50 initiative have set any short-term emissions reduction targets that include Scope 3 emissions, which includes the sector's supply chain and is its largest source of emissions. And none of these companies have published a climate transition plan. [10]Reporting companies in the Ceres study variously estimated their Scope 3 emissions as about 70-75% of their total emissions.

This data is broadly consistent with IATP's own research into emissions estimated from transnational meat and dairy companies, using the FAO's GLEAM methodology. Our 2018 co-authored report found that "Only four [of 35 studied] companies — NH Foods (Japan), Nestlé (Switzerland), Friesland Campina (the Netherlands) and Danone (France) — provide complete, credible emissions estimates. However, under the current circumstances, even these four are not obligated to reduce these emissions. Most of the companies that do report emissions have seriously underreported them and have not included most of their supply chain emissions in their calculations."[11] In April 2022, IATP reported that the global meatpacker JBS had increased its absolute emissions by 50% from 2017-2021, while pledging to achieve net zero emissions by 2040. The accuracy of the IATP reporting was confirmed by a professor of environmental

[9] https://gleami.apps.fao.org/
[10] "The Investor Guide to Climate Transition Plans in the U.S. Food Sector," Ceres, May 24,2022, p. 4. https://www.ceres.org/sites/default/files/reports/2022-05/FF_TransitionPlaninFoodSector_FINAL_LR_May22.pdf
[11] "Emissions Impossible," Institute for Agriculture and Trade Policy and GRAIN, July 2018, pp. 5-6. https://www.iatp.org/sites/default/files/2018-08/Emissions%20impossible%20EN%2012.pdf

science consulted by the Financial Times.[12] Investors may not decide to increase their holdings in companies whose absolute emissions and therefore, the scale of their climate related financial vulnerability continues to increase. However, investors should not make those decisions without the accurate, comprehensive and comparable climate-related financial information that the PR would elicit, if adopted and implemented.

The PR applies to "foreign private issuers" whose shares trade on U.S. exchanges. (PR, p. 43 and footnote 125, et passim), so IATP believes that our analysis of foreign issuer emissions reporting is relevant to the definition of the baseline from which registrants report their emissions. Supply chain emissions account for an estimated 80-90% of all meat and dairy company emissions.[13] According to our 2021 study of 20 meat and dairy companies in the European Union and Switzerland, Nestlé was an "A-Lister" in terms of reporting its supply chain emissions.

However, for investors trying to determine whether Nestlé's reported emissions indicated that it had an effective and transparent plan to manage climate-related transition risks, the reported numbers overestimated progress to meet Nestlé's mitigation targets because of how the company set its emissions baseline: "While the EU has pledged to cut emissions by 55% below 1990 levels by 2030, corporations like Nestlé are inflating their climate actions by committing to reduce GHGs from a much larger pie of future emissions. By using a baseline based on projected growth rather than the standard practice of using a past year, companies are setting a dangerous precedent of obfuscation and greenwashing."[14]

The PR should permit GHG emissions data reporting only from a historical year baseline and not from an econometric emissions baseline that conflates absolute historical emissions with emissions attributed to the registrant's future projected economic growth. For investors to understand the scale of physical and transition risks of registrants, and the expenditures and costs associated with managing those risks, the emissions baseline for a registrant's mitigation activities must be in terms of absolute emissions estimated from the beginning of a fiscal year, rather than from an intensity baseline relative to future projected emissions as a function of economic growth.

Following our responses to SEC questions, our letter concludes with a couple of proposed amendments to Regulation S-K items 1500 and 1506. These proposed amendments are based on our responses to some of the following questions, particularly questions 24 and 173.

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[12] Bryan Harris, "Meatpacker JBS comes under fire for 50% emissions rise," *Financial Times*, April 21, 2022. https://www.ft.com/content/92904829-3a28-4d6e-aab7-467c625497c7

[13] Ibid., p. 6.

[14] Shefali Sharma, "Emissions Impossible Europe," Institute for Agriculture and Trade Policy, December 13, 2021, p. 22. https://www.iatp.org/sites/default/files/2021-12/IATP_Emissions-Impossible-Europe-f_0.pdf

Responses to SEC questions

2. If adopted, how will investors utilize the disclosures contemplated in this release to assess climate-related risks? How will investors use the information to assess the physical effects and related financial impacts from climate-related events? How will investors use the information to assess risks associated with a transition to a lower carbon economy?

Investors and investment advisors are obliged to perform due diligence regarding SEC registrant claims prior to making, reducing or withdrawing investments or advising the same. These due diligence requirements are well defined both in the Securities Act and the Exchange Act. Survey questions for voluntary climate-related disclosures in the due diligence process are proliferating.[15] Company responses to voluntary climate disclosure survey questions, such as those of CDP (formerly the Carbon Disclosure Project), are resulting in greater response rates, But CDP grading of those responses often indicates that the quality of the disclosures received. may not be useful to investors. Even case studies in the investor use of climate-related disclosures report only in terms of a small selection of climate-related disclosure metrics, most frequently reporting on emissions according to a company's own methodology.[16] Given the data limits to understanding investor use of specific information in voluntary disclosures, the following answer to this crucial question is generic, but, we believe, indicative of representative investor use.

The standardized disclosure formats in the PR should enable investors to evaluate the registrant's analysis of the physical risks of climate change to its assets and value chains and judge the extent to which the registrant's plans and investments to manage those risks are adequate in the short, medium and (if possible) long-term, relative to the investor's risk appetite and portfolio charter. The standardized reporting format, particularly regarding electronically tagged data (PR, p. 44), should enable investors to compare the adequacy of physical risk analysis and mitigation planning among registrants in the same economic sector.

The standardized disclosure requirements for reporting transition associated risks and costs likewise will aid investors to improve compliance with due diligence obligations. Transition risks, e.g., estimating a registrant's Scopes 1 and 2 and Scope 3 emissions (if part of a registrant's emissions reduction target setting or if "material"[17]) and the costs of managing those risks are, like most items in current issuer financial statements, estimates. If such

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[15] E.g., "Climate Change: Due diligence questions your company should be prepared to answer," Addisons, March 14, 2022. https://www.lexology.com/library/detail.aspx?g=18876246-7f99-491a-8f9b-6014f74c4abf;

[16] E.g., "Case studies: CalPERS," CDP, https://www.cdp.net/en/articles/investor/calpers

[17] Per the proposed rule, judgment on what is material is not limited to what the registrant considers to be "material." "As defined by the Commission and consistent with Supreme Court precedent, a matter is material if there is a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities or how to vote. As the Commission has previously indicated, the materiality determination is largely fact specific and one that requires both quantitative and qualitative considerations. Moreover, as the Supreme Court has articulated, the materiality determination with regard to potential future events requires an assessment of both the probability of the event occurring and its potential magnitude, or significance to the registrant." (https://www.sec.gov/rules/proposed/2022/33-11042.pdf, pp. 64-65, including footnotes 209-211.)

estimates are developed with the protocols recommended by the Commission and filed in good faith, investors are likely to reward registrants with longer term investments that will help to capitalize transition activities. Furthermore, investors who determine that registrant transition risk planning is feasible and implementation of those plans is credible are more likely to invest in a registrant's climate-related opportunities.

Investors will evaluate a registrant's transition risk disclosures with greater confidence if the information in those disclosures is standardized and comparable to that of other registrants in 10-K and 10 Q reporting. While those disclosures will not be the sole source of information for investor due diligence and decision-making, they will enable investors to compare a registrant's forward-looking climate-related risk statements with its historical record on managing those risks.

3. Should we model the Commission's climate-related disclosure framework in part on the framework recommended by the TCFD, as proposed? Would alignment with the TCFD help elicit climate-related disclosures that are consistent, comparable, and reliable for investors? Would alignment with the TCFD framework help mitigate the reporting burden for issuers and facilitate understanding of climate-related information by investors because the framework is widely used by companies in the United States and around the world? Are there aspects of the TCFD framework that we should not adopt? . . .

We agree with the proposal to model the SEC climate-related financial disclosure framework in part on the TFCD framework. The reasons for doing so are patent in the TCFD's executive summary of its 2021 status report:

> Since the release of the 2020 TCFD status report, over 1,000 additional organizations have pledged support for the TCFD recommendations. As of October 6, 2021, the Task Force had over 2,600 supporters globally, including 1,069 financial institutions, responsible for assets of $194 trillion. TCFD supporters now span 89 countries and jurisdictions and nearly all sectors of the economy, with a combined market capitalization of over $25 trillion — a 99% increase since last year.[18]

Despite the success of the TFCD in securing both government and private sector commitments to align their disclosure requirements and practices with the TFCD recommendations, the lessons learned by TFCD aligned disclosures from users and preparers have been and will be of continued help to the SEC in adapting the TFCD framework both to U.S. law and Generally Accepted Accounting Principles.[19] For example, TFCD survey response preparers reported that "incorporating climate considerations into impairment analysis can be challenging due to divergent time horizons between accounting and climate reporting frameworks."[20] The PR has responded to the challenge of "divergent time horizons" by requiring an accounting of impairment costs and other disclosures within a fiscal year, but by providing also for reporting

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[18] "Task Force on Climate Related Financial Disclosures: 2021 Status Report," at 1. https://assets.bbhub.io/company/sites/60/2021/07/2021-TCFD-Status_Report.pdf
[19] Op cit., pp. 64-75.
[20] Op. cit., p. 65.

in nearby historical years to take into account the challenges of attribution of a registrant's damages and costs from severe weather events and chronic climate trends, such as prolonged droughts. Other such accommodations resulting from diverging time horizons likely will be needed.

TFCD's 2021 "Guidance on Metrics, Targets and Transition Plans" includes conclusions drawn from responses to TFCD private sector and public organization surveys. One important conclusion is that "Unfortunately, organizations' disclosure of the resilience of their [transition planning] strategies under different climate-related scenarios is relatively low."[21] One reason for this particularly low rate of disclosure is a low rate of the registrant's use of climate-related scenario analysis. Investors will want to know how registrants have used climate-related scenario analysis in their transition risk planning. They will want to know if that use of scenario analyses is sufficiently varied and granular to inform a credibly resilient transition plan, at least for the short and medium terms. For the inclusion of Climate Value at Risk in climate scenario analysis, there are methodologies that registrants can consider adapting to their circumstances.[22]

For example, the Network on Greening the Financial System has published 50 model climate related scenarios for central banks and large financial institutions.[23] However, if climate-related scenario analysis is lacking for specific sectors, companies in those sectors may need more time to adapt their current scenario analyses to incorporate climate-related factors. The proposed rule should require qualitative and quantitative evidence of registrant use of climate-related scenario analysis in their 10-K reporting. The Commission should consider granting registrants a phase-in period of up to three years to ensure that the registrants can document their use of climate-related scenario analysis and disclosure transition plans that have a high degree of resilience relative to other registrants in an economic sector. A time limited safe harbor from litigation for scenario analysis is appropriate to foster more widespread and well-informed transition planning. (Question 31)

10. We define transition risks to include legal liability, litigation, or reputational risks. Should we provide more examples about these types of risks? Should we require more specific disclosures about how a registrant assesses and manages material legal liability, litigation, or reputational risks that may arise from a registrant's business operations, climate mitigation efforts, or transition activities?

The PR would benefit from more examples, particularly regarding the limits of insurance to act as a buffer against legal liability. The PR states, "For many investors, the availability of insurance and the potential exposure to damage, loss, and legal liability from wildfires may be a

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[21] "Guidance on Metrics, Targets and Transition Plans," Task Force on Climate-related Financial Disclosures, October 2021, p. 6. https://assets.bbhub.io/company/sites/60/2021/07/2021-Metrics_Targets_Guidance-1.pdf
[22] E.g., "MSCI Real Estate Climate Value at Risk (Climate VaR) Methodology," MSCI, Inc., 2021. https://www.msci.com/documents/1296102/19288350/ClimateVaR_RealEstate_Methodology.pdf
[23] https://www.ngfs.net/sites/default/files/media/2021/08/27/ngfs_climate_scenarios_phase2_june2021.pdf

determining factor in their investment decision-making." (p. 64) While this statement is no doubt true, the increasing frequency, severity and unpredictability of climate change exacerbated severe weather events is challenging the actuarial basis for calculating insurance premia, and indeed, the insurability of certain registrants. As a result, insurance companies and law firms are struggling on how to define a "force majeure" event, the determination of which may exempt a registrant from contract liabilities and litigation to which it could be subject under other insurance contract stipulations.[24]

Simply put, for example, is the 100-year flood that happens every three or four years the kind of "unforeseeable" factor that has been part of most force majeure clauses? If registrants have facilities and/or value chains located within or adjacent to 100-year flood plain maps, under what stipulated legal terms should they be allowed to claim force majeure exemptions from liability? Should registrants be required to stipulate in FY reporting government indemnifications and other governmental assistance they have received in locations where they have been held harmless from paying damages to business and residents that have resulted from registrant failure to manage their probable and foreseeable climate-related risks liabilities in specific facilities locations?

The cost of litigation settlements is currently buried in "Note 10: Contingencies" to the consolidated financial statements in the 10-K form. Since it is likely that climate-related litigation expenses will grow, they should be clearly identified in the section of the 10-K climate related disclosures, as proposed. The SEC should consider requiring registrants to report financial liabilities and indemnifications when force majeure clauses fail to hold registrants harmless, at least until there is a consensus among the insurance industry and regulators on how to define and interpret "force majeure" relative to climate change attributed damages. These litigation expenses should be reported separately, according to the severe climate-related weather events and "natural conditions" specified in the PR. We understand "natural conditions" to be chronic and foreseeable climate-related trends, such as sea rise, prolonged drought, aquifer draw down rates greater than the replenishment rate, etc. However, our understanding could be incorrect, so the SEC should propose a definition for "natural conditions."

12. For the location of its business operations, properties or processes subject to an identified material physical risk, should we require a registrant to provide the ZIP code of the location or, if located in a jurisdiction that does not use ZIP codes, a similar subnational postal zone or geographic location, as proposed? Is there another location identifier that we should use for all registrants, such as the county, province, municipality or other subnational jurisdiction? Would requiring granular location information, such as ZIP codes, present concerns about competitive

[24] Selina Lee-Anderson, Andrew West, Claire Seaborn, "Impacts of climate change—foreseeable or unforeseeable? Drafting force majeure clauses in an era of economic uncertainty," McCarthy Tetrault, August 8, 2018; Anatole Boute, "Environmental Risk and Force Majeure Clauses: Relief from Fossil Fuel Contracts in the Decarbonization Era," *Journal of Environmental Law,* January 27, 2021. https://academic.oup.com/jel/article/33/2/339/6126365

harm or the physical security of assets? If so, how can we mitigate those concerns? Are there exceptions or exemptions to a granular location disclosure requirement that we should consider?

IATP agrees that disclosure of the location of registrant business operations, processing facilities, and transportation hubs and transfer points should be mandated in the PR. Such location disclosures will enable investors to disaggregate information about the registrant's facility and supply chain exposures to physical risks and to evaluate the extent to which the registrant's reported transition plan reduces those location specific risks and at what cost. Although ZIP codes do not represent a uniform geographical expanse, they are a point of departure for estimating GHGs derived from travel between registrant facilities, e.g., example to transport raw materials for processing at a registrant facility or to estimate the GHGs associated with transporting finished products to wholesale warehouses within Greenhouse Gas Protocol proscribed operational boundaries. ZIP code identification also allows investors to ask detailed questions about the registrant's identification of its physical risks and verify answers to those questions and questions concerning transition plans affecting certain facilities and supply chains.

Most facilities already have ZIP codes or other sub-national postal codes assigned to them so the likelihood that identification of the location of a registrant facility would present a risk of competitive harm or a risk to the security of the facility is low. However, the PR should indicate that the SEC will develop a process by which a registrant can apply for classification of the location of a specific facility as Confidential Business Information (CBI), if the registrant can demonstrate that public identification of the location of a facility would result in competitive harm and/or a risk to the physical security of the facility. For example, facilities for the design, prototyping and manufacture of new weapon systems might seek CBI status for part of their climate-related financial reporting. However, the Commission should explain that granting CBI status to the location of a facility covered by the PR would not exempt the registrant from collecting, aggregating and anonymizing data about that facility in its overall reporting requirements, e.g., of Scope 1, 2 and 3 emissions reporting.

24. If a registrant has used carbon offsets or RECs [Renewable Energy Certificates], should we require the registrant to disclose the role that the offsets or RECs play in its overall strategy to reduce its net carbon emissions, as proposed? Should the proposed definitions of carbon offsets and RECs be clarified or expanded in any way? Are there specific considerations about the use of carbon offsets or RECs that we should require to be disclosed in a registrant's discussion regarding how climate- related factors have impacted its strategy, business model, and outlook?

Generally, we support the proposed terms for disclosure of carbon offset and RECs under Regulation S-K items 1502 and 1506. However, we believe the proposed rule should include an Item 1500 definition for "carbon offset derivative" and for "REC derivative" (comprising futures, options and swaps contracts) because of the additional due diligence challenges and costs that use of these derivatives pose for investors. Currently, registrants report only the "fair value" of

"Derivatives Instruments and Hedges" largely in foreign exchange and interest rate derivatives. The expansion we propose of "Derivatives Instruments and Hedges" item reporting is justified by industry expectations of a greatly scaled up voluntary carbon market ($100 billion annual in offset trading by 2050? More?) in which registrants from all economic sectors use offset derivatives contracts to reach "net zero" emissions by as early as 2030.[25] A recent report states, **"**A corporate net-zero commitment seeks to reduce emissions as far as possible as the primary strategy. Offsets are only considered once strategies to avoid, reduce, and substitute have been implemented."[26] However, there are currently no legal means to limit a registrant's use of cash market offsets and offset derivatives, while exchanges have a fiduciary duty to maximize transactions, trading and clearing fees, and new products, such as offset derivatives contracts. We assume there will be exponential growth in the registrant's use of offset derivatives and believe the cost of that use should be reported beyond the registrant's estimate of their "fair value."

To the extent that issuers use carbon offsets and RECs to achieve climate-related goals and targets, per Item 1506 a), the offset and REC derivatives should be reported separately from the offset and RECs credits, even if the use is restricted by registrant commitments to the requirements of the Science Based Targets Initiative (SBTi) or by a registrant's emissions reduction goals set according to its own criteria. Such granular reporting data should help investors understand the extent to which and how the registrant uses offsets and RECs within an overall strategy to manage transition risks.

If the registrant purchases a carbon offset or REC directly from an offset verification registry or energy provider, respectively, and retires the offset or REC within the SEC 10-K reporting fiscal year, the contribution of the offset or REC to the registrant's overall emissions reduction strategy, in theory, may be easily calculated and readily understood by the investor. If the disclosure includes the offset project number of a registry's Verified Carbon Unit (VCU), which includes the information required in proposed Item 1506 d), the diligent investor can determine whether the offset project/s from which the VCU is derived meets the investor's environmental, social and accounting integrity requirements within the investor's fiduciary duty.

However, it must be the registrant's responsibility to take all reasonable measures to ensure that the offsets it purchases directly from registries are retired within the maturity of the purchase contract. Carbon Market Watch recently described the difficulty of determining whether an offset credit has been retired: "In many cases, it is impossible today to verify that companies have retired the carbon credits they claim to have retired. It also cannot be fully

[25] Jess Shankleman and Akshat Rathi, "Wall Street's Favorite Climate Solution Mired In Disagreements," Bloomberg Green, June 2, 2021.
[26] Anuj Saush, Ioannis Siskos and Julia Stanfield, "The Role of Carbon Offsets in the Net Zero Journey", Executive Summary, The Conference Board, April 21, 2022.

ruled out that brokers are selling the same carbon credit to multiple companies."[27] The proposed Carbon Market Watch solution to this verification problem may or may not be adopted by the U.N. Framework Convention on Climate Change governments to which it is directed. But even if the proposed solution is adopted for Internationally Transferred Mitigation Outcomes (in the terminology of the Paris Agreement's Article 6), the solution will not apply directly to the legal parameters of the PR. However, insofar as registrants use offsets to claim reductions of their absolute emissions, the offsets must be retired to claim any emissions reduction contribution in the registrant's transition plan. Furthermore, it is the registrant's responsibility to ensure that the offset credits it has purchased have not been sold to other companies, exacerbating the double counting problem in emissions credit trading.

To "disclose the amount of carbon reduction represented by the offsets or the amount of generated renewable energy represented by the RECS" (proposed Item 1506 d) within a reporting fiscal year assumes that the offset credits or RECs are retired in that same fiscal year. The need for separate reporting of registrant use of offsets and offset derivatives is partly dictated by derivatives "rollover" trading strategy, which combines risk appetite and profit objectives[28] that may or may not include offset or REC physical delivery/retirement within a fiscal year. A registrant should report its use of offset and/or REC derivatives for physical delivery (retirement with corresponding verified emissions reductions) within the fiscal year, with an estimate of physical delivery of offset and/REC derivatives contracts carried beyond the fiscal year into the derivatives contracts' rollover periods.

Another reason to report offset and REC derivatives separately is the complexity of the underlying asset of these derivatives, particularly if the underlying is an index that combines more than one asset in a proprietary formula. For example, the underlying asset of emissions offset derivatives, such as the Chicago Mercantile Exchange's Global Emissions Offset (aviation industry emission oriented)[29] and Nature Based-GEO (land, agricultural and forestry based)[30] emissions offset futures contracts are comprised of offset credits from more than one verification protocol. In the case of the CME GEO futures contract, the underlying asset is a proprietary index that risk weights the VCU prices of three of eight different carbon registries[31] accepted by the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA).[32] (In addition to use of CORSIA credits by the aviation industry, CORSIA offsets have been used by fossil fuel companies to claim "carbon neutral" fossil fuel shipments.[33]) To evaluate the

[27] "Carbon Market Watch recommendations on carbon market infrastructure for Article 6 of the Paris Agreement," March 30, 2022. https://carbonmarketwatch.org/publications/carbon-market-watch-recommendations-on-carbon-market-infrastructure-for-article-6-of-the-paris-agreement/
[28] E.g., Sandip Raichura, "Understanding Derivatives Rollover Data," Prabhudas Lilladaher, April 28, 2019. https://www.plindia.com/blog/understanding-derivatives-rollover-data/
[29] https://www.cmegroup.com/trading/energy/cbl-global-emissions-offset-futures.html
[30] https://www.cmegroup.com/trading/energy/nature-based-global-emissions-offset-futures.html
[31] https://www.cmegroup.com/education/articles-and-reports/cbl-global-emissions-offset-futures-faq.html#five
[32] https://www.iata.org/en/iata-repository/pressroom/fact-sheets/fact-sheet---corsia/
[33] Camilla Hodgson, "Use of carbon credits for fossil fuel shipments surges," *Financial Times*, November 3, 2021.

investment risks in such offset derivatives, the investor not only needs to understand the protocols and technologies used to validate emissions reductions in offset projects, but also should understand the consequences of changes to verification protocols for the underlying.

Carbon Plan recently determined that based on a review according to four metrics, 14 verification protocols for soil carbon based VCUs were of "poor quality."[34] If the price of such VCUs collapses, due to market participant corroboration of the Carbon Plan or similar analyses, the resulting loss of value to registrants holding those VCUs may not present a great risk to the issuer's balance sheet. However, investors in those companies may be concerned that a business strategy reliant on poor quality offset and offset derivatives credits does not manage transition risks well enough to justify investing in the registrant.

Discovery that a registrant had misrepresented emissions avoided, reduced or removed, due to the purchase of poor quality VCUs, could be of investor concern for at least two reasons. (Carbon market data fraud exists, of course,[35] but misrepresentation of emissions due to excessive optimism about the accuracy of soil carbon computer modeling, and remote sensing of carbon sequestration, is more prevalent.) First, if issuers spend far more on carbon avoidance, reduction and removal and storage credits than on direct financing of mitigation in registrant operations or products, some investors may be concerned that the issuers' plan for managing transition risks is overly or preponderantly reliant on offset trading. Second, even if investors support reliance on offset trading to meet an issuer's emissions reduction targets or goals, an issuer misrepresentation of the emissions reductions achieved could result in litigation and/or reputational risks that may significantly decrease an issuer's share price and the value of the investor's position in those shares.

The SEC proposes that registrants report "the cost of the offsets or RECs" (Item 1506 d) if used in the context of achieving their targets or goals. We believe that the SEC should define the term "costs" with greater specificity according to what kind of offset or REC the registrant is using. The costs for issuers to finance offsets and/or to buy offsets from registries will differ from buying, holding and selling offset credits on exchanges. Issuers that finance offsets should break out costs according to whether the offsets are emissions avoidance offsets, reduction offsets, or carbon removal and storage offset credits. Exchange trading costs for issuers would include broker fees, transaction fees, initial and variation margin collateral costs, and clearing fees, in addition to the costs of the credits on the day of purchase. For offset and REC derivatives trading, registrations should report the gross notional value of these derivatives transactions for the fiscal year.

The credits derived from carbon capture and storage technologies, such as Direct Air Capture, will very likely be purchased at higher cost because of the very, very high cost of the removal

[34] J. Zelikova et al, "A buyer's guide to soil carbon offsets," Carbon Plan, July 2021. https://www.iif.com/Portals/1/Files/TSVCM_Public_Consultation.pdf

[35] E.g., Emissions data falsification in China, as reported by Karoline Kan, "Climate Report," Bloomberg Green, April 18, 2022.

and storage technologies that are in a pilot phase and not commercially viable without massive government technological, financial and policy support. The latest U.S. federal infrastructure bill spares the private sector the full cost of carbon capture and storage technologies by paying for 80% of the pilot projects and regional hubs for those technologies, up to $12.1 billion over the duration of the bill.[36] Yet industry is demanding higher and greater taxpayer subsidies and tax credits to build more storage and pipeline facilities, demands which expose both registrants and investors, to say nothing of the public, to transition risks of U.S. politics.

The Commodity Futures Trading Commission (CFTC) allows exchanges to self-certify that new derivatives contracts and changes to contract terms, including for offset futures, comply with CFTC rules and core principles, even for novel contracts.[37] The SEC has no authority over offset and REC derivatives trading, which is regulated by the CFTC. Nevertheless, the SEC should have an information sharing agreement with the CFTC about self-certifications of new offset and REC derivatives contracts, and self-certifications of exchange changes to existing offset and REC derivatives contracts. Registrant use of the new contracts and changes to those contracts may have a material impact on the registrant's climate financial risk management performance. The SEC should notify investors of new self-certifications on a website page for implementation of the final climate-related financial disclosure rule.

An issue not addressed in the PR but of great concern to investors and market participants more generally is the environmental, social and accounting integrity of the projects that are the underlying assets of the tradeable offset credits and offset derivatives contracts. According to a Task Force on Scaling Voluntary Carbon Markets (TSVCM) survey of buyers and prospective buyers of carbon offset and removal credits, 45% of those surveyed were concerned about "a lack of environmental and social integrity of certain projects."[38] The SEC provides useful information to investors by requiring issuers that use offsets or RECs to meet their climate targets and/or in their business strategy to identify the carbon credit verification and certification source of those offsets and RECs. (Item 1506 d)

Questions 35-41 on Board Oversight and Management Oversight

IATP agrees with the proposed measures, derived from the TCFD, to identify and establish clear expertise, roles and responsibilities and a structure of incentives for board and management compliance with the PR. The PR's requirements for board and management oversight will help ensure that the analysis of a registrant's climate related-risk, liabilities, costs and opportunities does not remain within one unit of the registrant, e.g., that of the Chief Officer for

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[36] Mary B. Powers and Debra K. Rubin, "Feds Roll Out $12.1 B in Infra Funding for Carbon Tech, Pipelines," *Engineering News Record*, February 20, 2022.

[37] John Kostyack, Lee Reimers and Steve Suppan, Letter to the Commodity Futures Trading Commission regarding issues discussed at the Energy and Environmental Markets Advisory Committee, September 28, 2021. https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=65876&SearchText=

[38] "Public Consultation Report," Task Force on Scaling Voluntary Carbon Markets, May 20, 2021, (Slide 50).https://www.iif.com/Portals/1/Files/TSVCM_Public_Consultation.pdf

Sustainability, but is distributed through the registrant's operations and value chains, including those of the registrant's non-U.S. subsidiaries and affiliates.

101. ***Should*** *we require a registrant to exclude any use of purchased or generated offsets when disclosing its Scope 1, Scope 2, and Scope 3 emissions, as proposed? Should we require a registrant to disclose both a total amount with, and a total amount without, the use of offsets for each scope of emissions?*

Registrants who use offsets or RECs should exclude purchased or generated offsets from their Scopes 1, 2 and 3 emissions reporting. As leading private standards already have such a separate reporting requirement,[39] the SEC's proposal will not unduly burden companies in complying. Further, if an investor is interested in the "net" value (i.e., total emissions minus offsets), such a calculation is easily accomplished by separately reporting the data, whereas requiring registrants to only report a net value would restrict the full set of information available to investors. Such an exclusion would be consistent with SBTi net zero corporate standards, e.g., for the Forestry Land and Agriculture Group of companies.[40] Furthermore, there is enough fraud associated with offset and RECs trading[41] that investors will want a clear separation of a registrant's absolute emissions estimates and its use of offsets and RECs in its business strategy to manage emissions associated transition risks and costs. Deducting emissions reductions claimed in offsets and RECs from a registrant's reporting of absolute emissions would impair investor due diligence by obscuring the scale of emissions related financial risk to be managed. The Commission should require registrants to disclose their total absolute emissions with and without the use of offsets and RECs for each scope of emissions to give investors a clearer picture of the extent of use of offsets and RECs in the transition plan for each fiscal year and to realize multi-year emissions reduction targets.

Questions 93-104 (pp. 171-174), pertaining to the reporting of Scope 3 emissions

There are so many questions regarding Scope 3 emissions that we cannot respond to even a majority of them. Those we do respond to are thematized considering this framework statement from the PR:

> We acknowledge that a registrant's material Scope 3 emissions is a relatively new type of metric, based largely on third-party data, that we have not previously required. We are proposing the disclosure of this metric because we believe capital markets have begun to assign financial value to this type of metric, such that it can be material

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[39] Partnership for Carbon Accounting Financials (PCAV). 2021. "Public Consultation Open from 10 November to 17 December." Accessed May 13, 2022. https://carbonaccountingfinancials.com/public-consultation; Greenhouse Gas Protocol. N.d. "Corporate Standard." Accessed May 13, 2022. https://ghgprotocol.org/corporate-standard.

[40] Suppan, "IATP responses to a public consultation paper of Science Based Targets Initiative net zero standard for Forestry Land and Agriculture Group of companies," Institute for Agriculture and Trade Policy, February 18, 2022, p. 3 commenting on p. 8 of the SBTi draft standard. https://www.iatp.org/documents/iatp-responses-public-consultation-paper-science-based-targets-initiative-net-zero

[41] E.g., Wayne D. Hettenbach and Lauren D. Steele, "The Past May Be Prologue: Energy Credit Fraud and Its Lessons for Carbon Credit Systems," Department of Justice Journal of Federal Law and Practice: Environmental Crimes, Vol. 69, No. 6 (December 2021), p. 79-100. https://www.justice.gov/usao/page/file/1460731/download

> information for investors about financial risks facing a company. Scope 3 emissions disclosure is an integral part of both the TCFD [footnote 468] framework and the GHG Protocol, [footnote 469] which are widely accepted. It also has been widely recognized that, for some companies, disclosure of just Scopes 1 and 2 emissions could convey an incomplete, and potentially misleading, picture. [footnote 470] We have attempted to calibrate our proposal to balance investors' demand for this information with the current limitations of the Scope 3 emissions data. (PR, pp. 173-174)

For those registrants whose Scope 3 emissions form most of their total absolute emissions and who have long value chains of upstream and downstream activities, there is perhaps no aspect of climate-related financial disclosure that is more difficult to estimate and to report, and then to mitigate through a transition plan. Even with the assistance of widely accepted emissions estimating and reporting protocols, there are technical challenges to estimating and reporting constituent GHG and developing transition plans to reduce the financial risks and costs associated with each constituent gas.

Investors are very unlikely to use disclosure of emissions alone to make an investment decision. However, investors can use disclosure of emissions as a factor to compare how one registrant is managing its transition risks and costs compared to that of another registrant in the same industrial sector. Annual disclosures of registrant emissions provide a baseline indicator for investors to assess the progress (or not) of registrant expenditures to reduce emissions and adapt their operations and supply chains to reduce costs associated with those emissions. (Question 93)

The Commission asks, "Should we require a registrant to disclose its GHG emissions both in the aggregate, per scope, and on a disaggregated basis for each type of greenhouse gas that is included in the Commission's proposed definition of 'greenhouse gases,' as proposed?" (Question 94) We agree with the Commission proposal on emissions disclosure. The reporting of emissions in aggregate in CO_2 MT equivalents allows investors to understand both the registrant's aggregate absolute emissions and the registrant's use of emissions offset contracts, which are denominated in CO_2 MT equivalents. Disaggregation of a registrant's total absolute emissions per scope and into the constituent GHGs enables more meaningful reporting to investors of the mitigation efficacy for certain scopes and constituent GHGs. For example, the reporting of Scope 2 emissions (purchased electricity) and use of RECs gives investors more insight into electricity costs within the registrant's business strategy. A registrant with Scope 3 emissions that include a large portion of methane due its production methods would be able to report to investors what it was doing to mitigate the transition risk of one or more government mandates to cut methane emissions by X% by 2025 or 2027. (Governments agreed in the Global Methane Pledge to cut methane emissions by 30% between 2020 and 2030.[42])

The Commission asks, "Should we require a registrant to disclose its Scope 3 emissions for the fiscal year if material, as proposed?" (Question 98) IATP agrees with the Commission's proposal

[42]Michelle Cain, "COP 26: a Global Methane Pledge is great, but only if it doesn't distract us from CO_2 cuts," *The Conversation*, November 2, 2021.

because whether Scope 3 emissions have a positive or negatives impact on the registrant's consolidated financial statements will be a determination made both by the registrant and the investor. These determinations, if significantly different, may result in litigation, which will delay both registrant actions to manage risks and costs associated with Scope 3 emissions, particularly if they are preponderant in the registrant's total absolute emissions. Requiring disclosure of Scope 3 emissions for all registrants, "regardless of materiality," would be contrary to the purpose of the PR and almost certainly would be struck down by the courts. However, the disclosure of Scope 3 emissions for businesses in which it is material, including financed emissions, must be mandatory. (Question 100) Voluntary disclosures will continue the inconsistency and incomparability of data reported under the SEC's 2010 voluntary climate guidance and other voluntary reporting guidelines.

Credible registrant reporting of Scope 3 emissions depends on aggregating emissions from upstream and downstream activities, as illustrated in non-exhaustive fashion in the PR, (pp. 170-171) and as estimated both from registrant and other data sources identified in the PR (pp. 172-173). We agree with the Commission's proposal to "require a registrant to disclose its Scope 3 emissions for each separate significant category of upstream and downstream emissions as well as a total amount of Scope 3 emissions for the fiscal year." (Question 102) Because registrants even within the same economic sectors are likely to have upstream and downstream activities that fall outside of the PR's non-exhaustive list, we agree with the commission's proposal to "allow a registrant to provide their own categories of upstream or downstream activities" in addition to those in the non-exhaustive list (Question 104). We agree that the PR should include an upstream activity category for land use, even though that category is not included in the Greenhouse Gas Protocol. (Question 104)

Questions 109-111 related to the reporting of emissions intensity metrics (PR, p. 182)

These are difficult questions for IATP to answer because of our experience, reported above, in estimating increases in absolute Scope 3 emissions among meat and dairy processing companies. Most of these companies claim emissions intensity reductions while their absolute emissions continue to increase to the detriment of the planet, its people and indeed, the registrant and its employees, contractors, and customers. We are mollified that the PR requires registrants to report both absolute emissions and emissions intensity data within the same fiscal year, because some companies advertise their net zero commitments based on deceptive emissions intensity accounting.[43] Assuming that a registrant's absolute emissions and emissions data reporting is accurate and comprehensive, investors will be able to determine whether decreases in emissions data intensity report are coherent with absolute emissions data reporting in Scopes 1, 2 and 3.

Our response to the proposed requirement that a registrant "disclose the intensity of its GHG emissions for the fiscal year, with separate calculations for (i) the sum of Scope 1 and Scope 2

[43] "Corporate Climate Responsibility Monitor 2022," New Climate Institute and Carbon Market Watch, February 7, 2022. https://carbonmarketwatch.org/publications/ccrm_2022/

emissions and, if applicable (ii) its Scope 3 emissions (separately from Scopes 1 and 2)" (Question 109) very much depends on the emissions intensity metric reported. As the Commission may be aware, biogenic emissions reductions do not compensate on a 1:1 ratio for geological emissions.[44] Emissions intensity metrics that obscure that fact may mislead investors who are attempting to understand the impact of emissions intensity metrics on the registrant's finances and business operations. The Commission asks, "Should we require the disclosed GHG intensity to be expressed in terms of metric tons of CO2e per unit of total revenue, as proposed?" (Question 110) For the purpose of interpreting emissions intensity figures, investors are familiar with revenue statements, restatements and their causes (e.g., reporting revenue and profits in a lower tax jurisdiction), so the PR should include a provision to require restatement of emissions intensity concurrent with revenue restatements.

However, investors may be less familiar with methodological controversy over the meaning of "metric tons of CO_2 equivalents," which could result in investor misunderstanding of a registrant's climate risk management performance and costs. Carbon Plan recently proposed a five-step process for reporting ton-year accounting[45] that, if implemented in reporting to the SEC, would reduce investor misunderstanding of what is represented in the MT CO_2 equivalent metric. The Commission should consider recommending the Carbon Plan ton-year accounting methodology to registrants and investors. (Question 111, regarding "further guidance") Reporting emissions intensity per unit of production (e.g., kilos of beef per MT CO_2) results in little comparable information for the investor, unless the investor is only comparing registrants that produce beef. An intensity metric per number of employees is probably not relevant to most investors. (Question 111) IATP does not know what to further advise regarding intensity metrics.

Proposed accommodations in Scope 3 reporting (Questions 133-134, pp. 214-215)

The PR summarizes the proposed accommodations as follows:

> To balance concerns about reporting Scope 3 emissions with the need for decision-useful emissions disclosure, we are proposing the following accommodations for Scope 3 emissions disclosure: • A safe harbor for Scope 3 emissions disclosure from certain forms of liability under the Federal securities laws; [footnote 546] • An exemption for smaller reporting companies ("SRCs") from the Scope 3 emissions disclosure provision; [footnote 547] and • A delayed compliance date for Scope 3 emissions disclosure.[footnote 548] (p. 210)

Registrants and their representatives requested the safe harbor, arguing that it was needed because of registrant dependence on third party data sources to aggregate Scope 3 emissions from many upstream and downstream activities. IATP concedes that the safe harbor "may encourage more robust Scope 3 emissions information, to the extent registrants feel reassured

[44] Zickfeld, K., Azevedo, D., Mathesius, S. *et al.* Asymmetry in the climate–carbon cycle response to positive and negative CO_2 emissions. *Nat. Clim. Chang.* **11,** 613–617 (2021). https://doi.org/10.1038/s41558-021-01061-2 and the Sixth Assessment Report, International Panel on Climate Change, Chapter 5.

[45] Freda Chay et al, "Unpacking ton-year accounting," Carbon Plan, January 31, 2022. https://carbonplan.org/research/ton-year-explainer

about relying on actual third-party data as opposed to national or industry averages for their emissions estimates." (p. 212) IATP shares the Commission's hope that the safe harbor will result in more robust Scope 3 reporting.

IATP is very concerned that the safe harbor accommodation not be unconditional nor open ended. The safe harbor should be provided only to registrants that follow the proposed rules. (Question 133) If application of the safe harbor is contingent upon reporting Scope 3 under the PCAF or Greenhouse Gas Protocol, registrants may claim unequal treatment compared to registrants for whom the use of PCAF or the Greenhouse Gas Protocol are recommended options. (Question 133) The loss of the safe harbor should not depend on the SEC and/or investors having to prove in court that the registrant submitted a "fraudulent statement" of Scope 3 emissions, since demonstration of fraud requires the usually difficult to prove evidence of intent. IATP proposes that the Commission replace "fraudulent statement" with "egregious misreporting" of a scale that misleads investors about the scale and composition of a registrant's Scope 3 emissions and the costs of mitigating those emissions. (Questions 133)

Finally, the safe harbor should sunset after three fiscal year reporting periods following the effective compliance date, since the Commission anticipates, and IATP agrees, that the technical challenges of Scope 3 reporting will recede as registrants gain more experience in using reporting protocols and data sources for their supply chain emissions. (Question 133) If the Commission decides not to sunset the safe harbor, it should require that registrants provide reasonable assurance by a third-party auditor of the accuracy of Scope 3 reporting. With reporting under the reasonable assurance standard, investors are much less likely to have cause to doubt the accuracy and comprehensiveness of registrant reporting.

IATP supports a phase-in period for compliance of one fiscal year for Large Reporting Companies and three fiscal years for Small Reporting Companies (SRCs) after the effective date of compliance. The Commission should propose the terms of a process for SRCs to apply for an exemption from Scope 3 reporting. (Question 134)

169. Should we require a registrant, when disclosing its targets or goals, to disclose:
• The scope of activities and emissions included in the target;
• The unit of measurement, including whether the target is absolute or intensity based; [footnote 273]
• The defined time horizon by which the target is intended to be achieved, and whether the time horizon is consistent with one or more goals established by a climate-related treaty, law, regulation, or organization;
• The defined baseline time period and baseline emissions against which progress will be tracked with a consistent base year set for multiple targets;
• Any intervening targets set by the registrant; and
• How it intends to meet its targets or goals, each as proposed? Are there any other items of information about a registrant's climate-related targets or goals that we should require to be disclosed, in addition to or instead of these proposed items? Are there any proposed items regarding such targets or goals that we should exclude from the required disclosure? If a

registrant has set multiple targets or goals, should it be permitted to establish different base years for those targets or goal?

We agree that the scope of activities and emissions, including specific GHG emissions, e.g., methane, must be disclosed within targets. Because it is possible to increase absolute emissions while claiming emissions intensity reductions,[46] targets for both absolute emissions reductions and for emissions intensity should be required for separate disclosure for each GHG constituent gas. Investors will want to know how both targets have been set and progress realized to achieve the targets to be able to compare target setting among registrants whose predominant activities are within one sector. Disclosure of targets should require that the targets are set from concurrent historical emissions baselines and that the registrant reports progress each fiscal year to achieve the targets for a period of five fiscal years. Five years is the minimum corporate commitment for those registrants that have set targets and agreed to third party evaluation, according to the general SBTi net zero corporate standard and to SBTI sector specific standards.

In our view, setting targets and reporting progress to realize targets beyond 2030 cannot yield information that is decision useful for investors, if only because of the early onset of one or more climate tipping points: "The concept of tipping points was introduced by the IPCC 20 years ago, but then it was thought they would only occur if global warming reached 5°C. Recent IPCC assessments, however, suggested that tipping points could be reached between 1°C and 2°C of warming."[47] The climate physical impacts of tipping points may fundamentally change the scope of registrant activities, the timeframe for disclosing registrant climate-relate financial risks and the investor analytic framework for evaluating registrant disclosures.

If a registrant engages in activities in more than one economic sector, which require separate targets and separate reporting to make that information comparable among registrants in a sector, our recommendations above still apply and apply to our response to question 170.

170. Should we require a registrant to discuss how it intends to meet its climate-related targets or goals, as proposed? Should we provide examples of potential items of discussion about a target or goal regarding GHG emissions reduction, such as a strategy to increase energy efficiency, a transition to lower carbon products, purchasing carbon offsets or RECs, or engaging in carbon removal and carbon storage, as proposed? Should we provide additional examples of items of discussion about climate-related targets or goals and, if so, what items should we add? Should we remove any of the proposed examples of items of discussion?

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[46] Miguel Jaller and Scott Mathews, "Can Carbon Intensity Metrics Help Achieve Net Carbon Reductions? June 2021. https://faculty.engineering.ucdavis.edu/jaller/wp-content/uploads/sites/298/2021/06/92021-Jaller-and-Matthews-Can-Carbon-Intensity-Metrics-Help-Achieve-Net-Carbon-Reductions.pdf

[47] Renee Cho, "How close are we to climate tipping points?" State of the Planet, Columbia Climate School, November 11, 2021.

Referring to our responses to question 169, the SEC should require each registrant to discuss in Regulation S-K items 1502 2(c) and 1506 (d) its business strategy, financial planning, capital allocation and outlook for meeting climate goals, targets and related opportunities. If the registrant has already committed to the 5-10-year contract terms of the general corporate or sector specific Science Based Targets Initiative (SBTi), the registrant may use the annual SBTi review of its progress towards meeting its SBTi commitment in partial fulfillment of its 1502 and 1506 obligations.

If the registrant sets its emissions baselines, targets and reporting according to internal criteria, the SEC should require disclosure of those criteria. To assist registrants in complying with items 1502 and 1506 reporting, the SEC should provide a non-exhaustive list of strategies and resources that companies, including SEC registrants, are using to achieve progress to set and realize their short-term and medium-term emissions reduction targets. As we indicated in our response to question 169, we do not view long-term commitments, such as corporate net zero pledges by 2050, to be useful information for investors. Of course, if registrants refuse to set emissions reduction targets or are unable to comply with SEC requirements for climate disclosures, that information might be useful to investors.

173. *If a registrant has used carbon offsets or RECs, should we require the registrant to disclose the amount of carbon reduction represented by the offsets or the amount of generated renewable energy represented by the RECS, the source of the offsets or RECs, the nature and location of the underlying projects, any registries or other authentication of the offsets or RECs, and the cost of the offsets or RECs, as proposed? Are there other items of information about carbon offsets or RECs that we should specifically require to be disclosed when a registrant describes its targets or goals and the related use of offsets or RECs? Are there proposed items of information that we should exclude from the required disclosure about offsets and RECs?*

Yes, the SEC should require information about the source of offsets and the nature of the underlying projects. In addition to information already identified by the SEC, below we provide specific items that the SEC should require registrants to disclose regarding the offsets a registrant utilizes.[48]

First, we suggest the SEC include the registry project ID, or if not available, sufficient information to identify the specific project from which offsets are sourced. In the case of pooled credit portfolios, disclosure should identify the pool from which credits are purchased. To support investors in identifying risky activity, disclosure should note if a registrant has purchased offsets from block-chain based technologies like cryptocurrencies (see question 2).

Second, the SEC should require registrants to disclose the breakdown between avoided emissions and carbon removals used. Projects that involve both emissions avoidance and removal should be identified as "mixed." As we describe in question 2 and question 24,

[48] The response to question 173 is almost entirely template language developed and agreed by the ad hoc Offsets Working Group coordinated by Americans for Financial Reform. IATP participated in that Working Group.

disclosure of the type of carbon credit used is critical when assessing both a registrant's progress toward its climate targets and a registrant's transition risk profile. Further, this is already becoming standard market practice. For example, two offset crediting mechanisms, American Carbon Registry and the Architecture for REDD+ Transactions (ART-TREES), are each planning to annotate their issued credits with information on whether the credits are resulting from removals projects or reductions/avoided emissions projects. So, too, is the Integrity Council on Scaling Voluntary Markets (IC-VCM), an offset credit rating organization under development that calls this added information "attributes." As these attributes would be attached to credits in the IC-VCM model contract language, they would therefore be knowable and reportable by registrants.

Third, the SEC should require registrants to disclose the removal method utilized and the duration of offset contract used. As noted in question 24, different types of carbon credits face different risks of reversal or project failure — for instance, forest carbon credits can be destroyed by wildfire, rendering their value worthless and requiring repurchase. To assist investors in assessing the risk of credit failure and the permanence of removal, registrants should disclose the removal method used (whether nature-based or technology-based) and the storage method (biological, geological, in products, or without storage). As with avoided emissions vs. carbon removal, the tagging of these attributes is already contemplated by the IC-VCM and should facilitate straightforward disclosure by registrants. We further suggest that the SEC require the disclosure of the duration of the offset contract utilized and describe transition risk planning assumptions that underpin the company's decision regarding what types of removal method to use.

Fourth, the SEC should require the disclosure of all credits retired in a fiscal year, and with an estimate of physical delivery of offset and REC derivatives contracts carried beyond the fiscal year into the derivatives contracts' rollover periods. As described in question 2 and question 24, it is often impossible for investors to ascertain whether a company has laid exclusive claim to the benefits of the carbon offset it uses. To remedy this, the SEC should require the specific disclosure of what credits a company has retired in each fiscal year, and for offsets sourced from derivatives, an estimate of physical delivery of offset and REC derivatives contracts carried beyond the fiscal year into the derivatives contracts' rollover periods.

Fifth, the SEC should require the disclosure of any external standards a company has signed on to. This could include whether a company is setting net zero emissions reduction targets according to specific criteria and recommendations like SBTi, or if they are subject to other voluntary efforts like the U.N.'s Race to Zero campaign. Such disclosure is germane to investors since different standards have specific criteria that companies must follow. For instance, for SBTi net zero emissions reduction target setting, "The use of carbon credits must not be counted as emission reductions toward the progress of companies' near-term science-based targets."[49] Furthermore per the SBTi contracts with net zero committing companies, "The use of

[49] "SBTi criteria and recommendations," Version 5.0, October 2021, p. 7. https://sciencebasedtargets.org/resources/files/SBTi-criteria.pdf

carbon credits must not be counted as emission reductions toward the progress of companies' near-term science-based targets." If a registrant is contractually following SBTi criteria, but is utilizing offsets inappropriately, investors may view that company's actions as less credible.

Sixth, the SEC should require that companies disclose any due diligence steps they have taken to ensure that offset or Carbon Capture and Storage programs they participate in fully respect the land rights of local and Indigenous communities. This includes reporting on any and all land rights conflicts that may arise in any offset project that the registrant makes use of to ensure adherence to land rights of local and Indigenous communities. This information will allow investors to assess more accurately potential legal, reputational, political and social risks borne by companies that participate in offset programs.

Seventh, we suggest that the SEC require separate reporting of offsets and RECs that are the underlying assets of derivative contracts. As described in question 24, a registrant's use of carbon offset derivatives presents unique financial risks and should be reported separately.

Finally, for "cost" of offsets or RECs, we suggest the SEC enumerate examples of which units of cost are appropriate to report. This should include cost per credit or cost per ton broken down according to whether the credits represent avoided emissions, removal or mixed outcomes, and for any derivatives used, registrants should report the gross notional value of these derivatives transactions for the fiscal year.

Suggested amendments to the proposed Regulation S-K climate disclosure terms

The SEC defines "carbon offsets" as follows:[50]

> [From Section 229.1500 (Item 1500) Definitions.]
>
> *Carbon offsets* represents an emissions reduction or removal of greenhouse gases ("GHG") in a manner calculated and traced for the purpose of offsetting an entity's GHG emissions.

We suggest that the proposed definition of carbon offsets be clarified in the following ways:

> *Carbon offsets* represents an emissions <u>avoidance,</u> reduction or removal of greenhouse gases ("GHG") in a manner calculated and traced for the purpose of offsetting <u>or compensating for</u> an entity's GHG emissions.

We believe it is important to distinguish between two types of climate action for which offset credits are created: the avoidance of emissions into the atmosphere in the first place and the removal of GHGs from the atmosphere. We believe that adding the word "avoidance" in the

[50] The proposed amendments to the PR's definition for "carbon offsets" was developed by the Offsets Working Group mentioned in footnote 44.

definition better captures the full range of offset projects and the terminology used in the industry. The category of emissions avoidance is frequently further segmented in the offset market into avoided emissions (for example, avoided deforestation) and reduced emissions (for example, through fuel switching). Some market actors, including the recently concluded Task Force on Scaling Voluntary Carbon Markets (TSVCM), collapse avoided and reduced emissions together (avoidance/reduction credits), reflecting the difficulty in always clearly distinguishing between them. There are also "mixed" projects, such as integrated forest management projects, where both avoidance and removals offsets may be generated.

The difference between these types of available offsets is material to investors and — as noted in our response to questions 2 and 173 — will encompass emerging market practices and the evolution of corporate standards that adopt or adapt different types of offset credits.

We note that "[O]ffsetting an entity's GHG emissions" is not a clear statement of what an offset does or does not do. Removals are the only type of offset that, theoretically, could change the *net* carbon emissions of a firm. *Avoidance* offsets, while potentially contributing to climate action, may lead in aggregate to less overall emissions (though please note the many caveats regarding offset integrity that we describe in response to question 2), but in no way could they "compensate for" the ongoing emissions of the registrant.

To compensate for fossil fuel emissions, which have a lifetime in the atmosphere of hundreds to thousands of years, permanent removals are required. Most offset credits available for trading are not for removals but for avoided emissions. Existing removal offsets are mostly for temporary land-based sequestration — sequestration which faces the risk of reversal from wildfires and other disruptions and can lead to the loss of the value of credits that have already been purchased.

Some registries set aside a buffer pool of credits, held off the market to compensate for the claimed emissions avoided or reduced that are reversed by wildfires and other extreme events. However, as wildfires and other severe events, such as floods that reverse soil sequestration reduction claims, increase in severity and frequency, the efficacy and financial value of buffer pools will diminish, perhaps dramatically.[51] As a result, both registrants buying offsets from registries with buffer pools and investors in those registrants will have to monitor whether offset credits truly represent the absolute emissions reductions claimed by registrants in their reporting to the SEC.

§ 229.1506 (Item 1506) Targets and goals.

(d) "If carbon offsets or RECs have been used as part of a registrant's plan to achieve climate-related targets or goals, disclose the amount of carbon reduction represented by the offsets or the amount of generated renewable energy represented by the RECS, the source of the offsets

[51] Gilles Dufrasne, "Up in smoke—California fires once again highlight dangers of forest offsets," Carbon Market Watch. October 22, 2020.

or RECs, a description and location of the underlying projects, any registries or other authentication of the offsets or RECs, and the cost of the offsets or RECs." (p. 481)

We reiterate here our proposal in response to Question 24 concerning the term "costs." The SEC proposes that registrants report "the cost of the offsets or RECs" (Item 1506 d) if used in the context of achieving their targets or goals. We believe that the SEC should define the term "costs" with greater specificity according to what kind of offset or REC the registrant is using. The costs for issuers to finance offsets and/or to buy offsets from registries will differ from buying, holding and selling offset credits on exchanges. Issuers that finance offsets should break out costs according to whether the offsets are emissions avoidance offsets, reduction offsets, or carbon removal and storage offset credits. Exchange trading costs for issuers would include broker fees, transaction fees, initial and variation margin collateral costs, and clearing fees, in addition to the costs of the credits on the day of purchase. For offset and REC derivatives trading, registrations should report the gross notional value of these derivatives transactions for the Fiscal Year."

Finally, IATP asks the Commission to consider our proposal, in responding to Question 24, that the PR include a definition for "Carbon offset derivatives" that would include our proposed amendments to the PR definition of "carbon offset" but extend that amended definition to include carbon offsets as the underlying assets for futures, options and swaps contracts.

Conclusion

The PR is a remarkable feat of research and drafting. The PR has fairly and transparently considered commenter views, posed questions partly in response to those views, and recommended standardized parameters to aid both registrants and investors in estimating and mitigating climate related financial risks. The PR also presents a framework to allow registrants to inform investors of their climate related financial opportunities.

IATP looks forward to further assisting the SEC, as needed, in the process to finalize and implement this critically important rule for capital markets, the U.S. economy and the people they serve.

Sincerely,

Steve Suppan, Ph.D.
Senior Policy Advisor