

INCLUSIVE CAPITAL PARTNERS

June 24, 2022

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549

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

Dear Ms. Countryman,

Inclusive Capital Partners, L.P. (“In-Cap”) writes broadly in support of File No. S7-10-22: The Enhancement and Standardization of Climate-Related Disclosures for Investors (the “Proposed Rule”). We appreciate all the time and effort of the Securities and Exchange Commission (“SEC” or “Commission”) staff and Commissioners to ensure the Proposed Rule furthers the SEC’s objectives to maintain fair, orderly, and efficient markets and to facilitate capital formation. In this submission we recommend some changes to the Proposed Rule in the spirit of making it more workable and effective over the long term. However, we want to be clear that we believe the Proposed Rule as written is a vast improvement over the current situation where In-Cap and other investors do not have access to the level or quality of data, tools, and processes required to best help us understand, quantify, and invest according to our view of the risks and opportunities related to climate change. The SEC has an important role in connection with investor climate objectives and the Proposed Rule aids investors by clearly establishing mandatory climate-related disclosures that are timely, standardized, comparable, efficient, reliable, and meaningful measures of climate risk and of sustainable climate outcomes. As will be shown below, we generally support the content of the Proposed Rule, but have concerns regarding the timing of its implementation.

Inclusive Capital Partners is an SEC-registered Investment Adviser based in San Francisco, California. In-Cap was founded by a group of experienced investors with a shared passion for positively leveraging capitalism and governance in pursuit of a healthy planet and the well-being of its inhabitants. We identify and invest in high quality businesses that offer compelling value propositions and generate measurable positive impact by contributing to solutions for the environment and society. In-Cap seeks superior long-term shareholder returns through constructive active partnerships with companies—including their management teams and boards—whose core businesses already provide solutions to or who are transforming their business models toward this pursuit.

Climate change mitigation and adaptation are not only among In-Cap’s named “Investable Impact Areas”, but we also believe that certain environmental and social issues can affect a company’s ability to execute its business strategy and create long-term value. Depending on how appropriately such issues are managed, they can either amplify or impede a company’s revenues, costs, access to capital, and/or license to operate. As such, our aim is to integrate material environmental and social considerations into our

investment decision-making and likewise advocate for its incorporation into the decision-making of our portfolio companies' management teams and boards. Among such issues, climate has undoubtedly made a more and more frequent appearance both as an investment opportunity and as an investment risk.

In preparing this letter, In-Cap has conducted numerous interviews with companies, investors, lawyers, scientists, climate experts and technologists and has attempted to incorporate their advice in this submission—without attribution, at their request.

Support for SEC Authority to Promulgate the Proposed Rule:

In-Cap supports the Proposed Rule because it contributes to the establishment of legally-binding, decision-useful and comparable climate-related information compared to the myriad versions of such information that are currently available and are often meaningless, or even misleading. The Proposed Rule will help ensure investor confidence and market stability because it directly addresses the increased investor demand in the market for companies that are mitigating climate change. In fact, a survey of 439 of large institutional investors showed that 79% of respondents believe that climate risk reporting is as important as traditional financial reporting, and almost one-third consider it to be more important.¹ The group of GFANZ Net Zero Asset Managers,² accounting for \$57.5 trillion AUM³ and representing over 45% of managed assets by the world's largest institutional investors and asset managers, have committed to

¹ Emirhan Ilhan, "[Climate Risk Disclosure and Institutional Investors](#)", Swiss Fin. Inst. Research Paper Series (Working Paper No. 19-66), (last revised Jan. 7, 2020);

Macquarie Asset Management, "[2021 ESG Survey Report](#)" (2021). (noting that in a survey of 180 global institutional real assets investors, including asset managers, banks, consultants and investment advisors, foundations and endowments, insurance companies, and pension funds, who combined represent more than \$21 trillion of assets under management, more than half of responding investors selected climate change as their primary ESG concern);

Morgan Stanley Institute for Sustainable Investing, "[Sustainable Signals: Individual Investors And The Covid-19 Pandemic](#)" (4th ed. 2021). (noting that, in a survey of 800 U.S. individual investors age 18 or older with minimum investable assets of \$100,000 conducted on behalf of the Morgan Stanley Institute for Sustainable Investing, 74 percent of investors expressed interest in climate-themed investments);

Ray Sin & Samantha Lamas, "[Are Your Clients ESG Investors?](#)", Morningstar (Apr. 22, 2019). (Morningstar report showing 72 percent of the U.S. population expressed at least a moderate interest in sustainable investing, qualifying as "balanced," "sustainability-minded," or "sustainability-driven.");

David Webber et al., "[Shareholder Value\(s\): Index Fund ESG Activism and the New Millennial Corporate Governance](#)", 93 S. CA. L. REV. 1250 (2020). (attributing increasing ESG stewardship and climate activism by large institutional investors to a competition to attract millennial investors, who are more focused on sustainable, long-term returns).

² GFANZ (Glasgow Financial Alliance for Net Zero) is a global coalition of leading financial institutions committed to supporting the goal of net-zero greenhouse gas emissions by 2050 or sooner. The Net Zero Asset Managers is an initiative within GFANZ comprising asset managers which commit to supporting net-zero goals by prioritizing decarbonization with their asset owner clients and portfolio companies.

³ The Net Zero Asset Managers initiative is an international group of asset managers committed to supporting the goal of net-zero greenhouse gas emissions by 2050 or sooner, in line with global efforts to limit warming to 1.5 degrees Celsius; and to supporting investing aligned with net-zero emissions by 2050 or sooner.

[Net Zero Asset Managers initiative](#) (noting "236 asset managers, with \$57.5 trillion in assets, have committed to achieve net-zero alignment by 2050 or sooner")

investing with the goal of achieving “net zero” by 2050 at the latest.^{4,5} Surely, this wide range of asset managers who publicly commit to “net zero” necessitates a means for asset owners and regulators to monitor their progress. Without proper disclosures and regulations, the claims of “net zero” aspirations by companies and asset managers are most often simply a marketing device, or worse, fraudulent advertising.⁶ Because of the furious pace of investor demand for investments in companies that are addressing the environmental problems of today,⁷ it is incumbent upon the SEC to protect against market-based distortions created by manager and company promises that prove to be meaningless, which, in turn, are facilitated by the dearth of meaningful information or useful analytical tools. If the Commission does not act with the Proposed Rule, there is a great likelihood of a “Minsky Moment” when the market scrambles to undo climate-related investments because they are seen to be based on empty promises.⁸

⁴ Willis Towers Watson Thinking Ahead Institute, “[The Asset Owner 100, 2021](#)” (2021) (noting, the \$10.6 trillion of GFANZ Asset Owners tracking Scope 3 emissions represent 45.1% of the \$23.5 trillion AUM of the world’s top 100 asset managers, as assessed by Willis Towers Watson in 2021)

Willis Towers Watson Thinking Ahead Institute, “[Top 500 managers see assets hit record](#)” (2021) (noting, the \$57.5 trillion of GFANZ Asset Managers tracking Scope 3 emissions represent 48.1% of the \$119.5 trillion AUM of the world’s top 500 asset managers, as assessed by Willis Towers Watson in 2021)

⁵ Carbon Disclosure Project (CDP), “[More than 680 financial institutions with US\\$130+ trillion in assets call on nearly 10,400 companies to disclose environmental data through CDP](#)” (2022). (noting the investors called on 10,400 companies to supply environmental data through CDP in order to provide them with better information on climate change)

Morgan Stanley “[Sustainable Signals: Individual Investor Interest Driven by Impact, Conviction and Choice](#)” (2019). (noting, in Morgan Stanley surveys of individual investors, climate is increasingly the principal motivation for investor ESG allocations)

Yale Center for Business and the Environment, “[Investors Push the Pace of Climate Risk Financial Disclosures](#)” (2018). (noting its survey of almost 100 investors committed to accelerating and improving climate change risks in the financial disclosures of companies)

⁶ A recent alleged example of an asset manager using ESG and climate commitments to mislead investors, is the allegations of greenwashing made against German asset manager DWS by its former Chief Sustainability Officer, who said the firm had overstated its ‘green’ or ‘ESG’ funds in prospectuses, to mislead investors and re-market their investments. In May 2022, the German financial regulatory authority raided DWS offices finding “sufficient factual evidence” of a crime. DWS shares have fallen more than 20% since the greenwashing allegations were made, which the firm denies.

⁷ Just as corporate disclosure and investor demand for climate-related information has precipitated the Climate-Related Disclosure proposed rules, human capital-related information has also become an increasingly important driver of corporate value and investor interest, as well as societal impact. For that reason, we also encourage the Commission to engage with public input and rulemaking on human capital disclosures, as soon as feasible.

⁸ EDHEC Business School, “[Doing Good or Feeling Good? Detecting Greenwashing in Climate Investing](#)” (2021). (noting, that portfolio greenwashing by passive investment vehicles, such as ETFs, amount to an underfunding of transitioning sectors by as much as 91% as a form of portfolio greenwashing);

Laurence Fletcher and Joshua Oliver, “[Green investing: the risk of a new mis-selling scandal](#)” (2022) in the Financial Times. (noting its possibilities that greenwashing is “on the brink of a mis-selling scandal in the mould of payment protection insurance, mortgages or diesel cars” and “if the shareholders have lost money and they’ve felt the company has misled them, you’ll see plaintiffs step in”);

Natixis, “Green-washing allegations are jolting the financial industry” (2021). (noting “Green or sustainable washing can further result in ... market risks, e.g. sizable impact on corporations’ share price”);

Massif Capital, “[Failure to Impact: Are ESG Funds Delivering on Investors' Ambitions?](#)” (2020). (noting that the portfolios of passive ESG funds are starving the 50% of transitioning industries of economically viable alternative solutions to decarbonize).

Most importantly, the Proposed Rule has correctly standardized both the presentation and the metrics that issuers should have to follow. This is needed by investors and is in keeping with the Securities and Exchange Act of 1934 that defines the SEC purpose as not only the protection of investors, but also the promotion of “...efficiency, competition, and capital formation.”⁹ Any fair reading of the Proposed Rule makes clear that the Commission recognizes that climate risk is a threat to both market stability and investor interests and is properly within the scope of the SEC’s legal mandate to act.

Support for Incorporation of Existing Standards in the Proposed Rule:

In-Cap endorses the SEC’s integration of nearly all the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) into the Proposed Rule. The TCFD framework, metrics and recommendations cover many of the essential elements of climate risk disclosure that we use for our decision-making and are broadly supported and used by companies, investors, and securities regulators worldwide. We also support the SEC’s inclusion of a Greenhouse Gas (GHG) emissions reporting requirement in the Proposed Rule because, thoughtfully constructed, this information is critical to our understanding of the quality of a company’s earnings in the face of climate change and the energy transition.

As with most global money managers, the In-Cap portfolio includes both domestic and foreign issuers. With our conviction that climate-related factors are vital to our investment decisions we are very keen that the Commission work with foreign jurisdictions and standard-setters to attempt to create a global climate-related disclosure regime. This objective is in keeping with the overall objective of the Proposed Rule to find standardization and commonality in climate reporting to both reduce costs of discovering such information, and to make it more reliable. While we endorse the use of TCFD recommendations, SASB Standards,¹⁰ and GHG Protocols, the same reasoning applies to why we believe that the SEC should embrace the most significant global effort to standardize sustainability and climate disclosures, specifically the International Sustainability Standards Board (“ISSB”), which was established on November 3, 2021. On March 31, 2022, the ISSB published two proposed standards (“ISSB Proposed Standards”)¹¹ and is requesting comment through July 29, 2022, with the expectation of final standards being published by the end of 2022. The aspiration is to create a global baseline for sustainability disclosures designed to provide investors with comparable, reliable, and useful measurements to assess enterprise value.

The Proposed Rule and the ISSB Proposed Standards, both of which are still preliminary, appear to share not only the same goals, but to have very synergistic methods, metrics, and requirements. In-Cap encourages the SEC to work closely with the ISSB and to create as much alignment as possible during this critical time for the movement to establish global climate disclosure regimes.¹² This will help achieve the

⁹ [Securities Exchange Act of 1934](#) (1934), Title 15 “Commerce and Trade”, § 77b on “Definitions; promotion of efficiency, competition, and capital formation.”

¹⁰ Inclusive Capital Partners is a member of the Sustainable Accounting Standards Board (SASB) Alliance and the SASB Standards Investor Advisory Group (IAG) and supports SASB’s approach to standard setting for a full range of financially material sustainability factors, including those related to climate change.

¹¹ International Sustainability Standards Board (ISSB), [“General Requirements for Disclosure of Sustainability-related Financial Information”](#) (2022) as IFRS Exposure Draft S1.

International Sustainability Standards Board (ISSB), [“Climate-related Disclosures”](#) (2022) as IFRS Exposure Draft S2.

¹² IISB, [“ISSB establishes working group to enhance compatibility between global baseline and jurisdictional initiatives”](#) (2022). (noting the ISSB has created a Jurisdictional Working Group of jurisdiction representatives, including the SEC, actively engaged in standard-setting in the field of sustainability disclosures, to establish

aim of mitigating the costs of reporting and providing more useful information to global investors and companies.¹³

While the hope is that there will be one global standard for all climate-related company and investor disclosures, we realize that this may be a hope too far. Short of that aspiration, we think it is very important that the Commission allow foreign issuers to file with the SEC according to their home country “alternative reporting regime”,¹⁴ so long as the Commission has determined that such regime is substantially similar to the SEC final requirements, the foreign issuer makes the information compatible with 282 XBRL tagging requirements and it meets all of the requirements listed in SEC question 187.¹⁵

Comments Regarding Treatment of “Scope 3 Emissions” in the Proposed Rule:

The Proposed Rule, in Subpart 229 Item 1500, defines “climate-related risks” as “actual or potential negative impacts of climate-related conditions” on a firm’s “consolidated financial statements, business operations, or value chains, as a whole.”¹⁶ And “value chain” is defined as “upstream and downstream activities related to a registrant’s operation.”¹⁷ In climate parlance, this is commonly known as “Scope 3” and includes 15 categories of emissions.^{18,19} Spanning from upstream to downstream activities along a company’s value chain, Scope 3 emissions are an important measure of GHG emissions under the Paris

dialogue for enhanced compatibility between the ISSB and other jurisdictional initiatives on sustainability disclosures. The SEC should actively participate with the ISSB proceedings.)

¹³ The ISSB Proposed Standards go further than the SEC Proposed Rule by recognizing the differences among industry sectors and accounting for more than GHG emissions. We encourage the SEC to look at including both of these ISSB factors into the Proposed Rule.

¹⁴ U.S. SEC “[The Enhancement and Standardization of Climate-Related Disclosures for Investors](#)” (2022), 17 CFR II.J question 183 (Release Nos. 33-11042; 34-94478; File No. S7-10-22), p280.

¹⁵ U.S. SEC “[The Enhancement and Standardization of Climate-Related Disclosures for Investors](#)” (2022), 17 CFR II.J question 187 (Release Nos. 33-11042; 34-94478; File No. S7-10-22), p282. (noting, SEC question 187 poses, “If we adopt an alternative reporting provision, should we require a registrant using that system to: State in the filing that it is relying on this alternative reporting provision; Identify the alternative reporting regime for which the climate-related disclosure was prepared; Identify the exhibit number of the filing where the alternative disclosure can be found; and File a fair and accurate English translation of the alternative climate-related disclosure if in a foreign language?”)

¹⁶ U.S. SEC “[The Enhancement and Standardization of Climate-Related Disclosures for Investors](#)” (2022), 17 CFR 229.1500(c) (Release Nos. 33-11042; 34-94478; File No. S7-10-22), p457.

¹⁷ U.S. SEC “[The Enhancement and Standardization of Climate-Related Disclosures for Investors](#)” (2022), 17 CFR II.G.1(b) (Release Nos. 33-11042; 34-94478; File No. S7-10-22), p461.

¹⁸ U.S. SEC “[The Enhancement and Standardization of Climate-Related Disclosures for Investors](#)” (2022), 17 CFR 229.1500(t) (Release Nos. 33-11042; 34-94478; File No. S7-10-22), pp170–171. (noting the Proposed Rule includes eight potential categories of upstream Scope 3 emissions, and seven categories of potential downstream Scope 3 emissions).

¹⁹ Combining upstream and downstream in the definition of Scope 3 has added complexity to the climate discussion, because for different industries the upstream and downstream climate impact can be quite different, and because for many industries capturing up- or downstream is done with varying degrees of difficulty. Therefore, there might be value in separating parts of the value chain – e.g. upstream, downstream – as a way to re-frame the confusion and consternation about Scope 3.

Accord.²⁰ These emissions often represent the majority (between 65-90%²¹, depending on the industry) of a company's total GHG emissions footprint, as well as the majority of its reduction opportunities.

While many will criticize the inclusion of Scope 3 in the Proposed Rule, In-Cap believes it is legitimate to consider because of the enormity of those emissions as well as the deafening signal from the sheer volume of asset owners, asset managers and companies that have already made public Paris-aligned "net zero" commitments. By definition, under the Paris Accord, it is impossible to achieve "net zero" without the inclusion of what is known as Scope 3 emissions.²² eader

²⁰ Conference of Parties (COP), "[Paris Agreement](#)" (2015). (noting, the Agreement establishes that the "the mitigation of greenhouse gas emissions by public and private entities" and "economy-wide emission reduction" through "environmental integrity, transparency, accuracy, completeness, comparability and consistency, and ensure the avoidance of double counting" (Articles 4 and 6) as a means of "limit[ing] the temperature increase to 1.5 °C above pre-industrial levels" (Article 2).)

Scope 3 value chain emissions include emissions from such upstream or downstream activities as: extraction and production of purchased materials and fuels; transport-related activities in vehicles not owned or controlled by the reporting entity; outsourced activities; waste disposal and electricity-related activities not covered in Scope 2, such as electricity transmission and distribution (T&D) losses; among others, as also categorized and covered by the Greenhouse Gas Protocol and Science Based Targets Initiative below.

Greenhouse Gas Protocol (GHG Protocol) "[Corporate Value Chain \(Scope 3\) Standard](#)" (2011).

Science Based Targets Initiative (SBTi), "[SBTi Criteria and Recommendations](#)" (2021), Version 5.0, October 2021.

U.S. Environmental Protection Agency (EPA) "[Scope 3 Inventory Guidance](#)" (2022). (noting "Scope 3 emissions, also referred to as value chain emissions, often represent the majority of an organization's total GHG emissions").

²¹ This has been reported, as below, by scientific and disclosure organizations, like [SBTi](#) and [CDP](#); independent studies from scholars at the [Yale School of the Environment](#), [Stanford Sustainable Finance Initiative](#) and [Carnegie Mellon University](#), among others; as well as the IPCC in its [Fifth Assessment Report](#) before COP26, which determined with "high confidence" that the doubling of greenhouse gases since 1970 results from direct and indirect (i.e. Scope 3) emissions in the private sector, particularly within advanced economies, where "accounting for indirect emissions" is a necessary means to limit the mid-century rise in temperatures to 1.5°C (i.e. net zero).

This scientific consensus is also what led the Greenhouse Gas Protocol to develop the 'Scope 3' standard [in 2011](#), which the Commission's proposal draws disclosure standards from (as does the EU Sustainability Reporting Standards ([ESRS](#))). The EPA (in [Scope 3 Inventory Guidance](#)) and CFTC (in [Managing Climate Risk in the U.S. Financial System](#)) have since also incorporated Scope 3 into reporting or disclosure recommendations.

In the order above, those studies and sources include:

SBTi, "[Value Change in the Value Chain: Best Practices in Scope 3 Greenhouse Gas Management](#)" (2018).

CDP, "[Transparency to Transformation: A Change Reaction](#)" (2021).

Edgar G Hertwich and Richard Wood, "[The growing importance of scope 3 greenhouse gas emissions from industry](#)" (2018) in Environmental Research Letters, vol. 13 no. 10.

Shrimali, Gireesh PhD, "[Scope 3 Emissions: Measurement and Management: Working Paper](#)" (2021) for the Sustainable Finance Initiative at Stanford University.

Y. Anny Huang and Christopher L. Weber, et al. "[Categorization of Scope 3 Emissions for Streamlined Enterprise Carbon Footprinting](#)" (2009) in Environmental Science & Technology, vol. 43 no. 22

IPCC, "[Summary for Policymakers](#)" (2014) in "Climate Change 2014: Mitigation of Climate Change" of the Fifth Assessment Report.

Greenhouse Gas Protocol (GHG Protocol) "[Corporate Value Chain \(Scope 3\) Standard](#)" (2011).

EFRAG, "[ESRS E1: Climate Change: Exposure Draft](#)" (2022).

U.S. Environmental Protection Agency (EPA) "[Scope 3 Inventory Guidance](#)" (2022).

U.S. Commodity Futures Trading Commission (CFTC), "[Managing Climate Risk in the U.S. Financial System](#)" (2020).

²² SBTi, "[How can companies address their scope 3 greenhouse gas emissions?](#)" (2018). (noting that, "Emissions across all scopes must be reduced and eventually reach net zero. This means...for the majority of sectors, the largest sources of a company's emissions lie upstream and/or downstream of their core operations [Scope 3].")

Let us take a quick tour through the global Paris-aligned “net zero” commitments of asset owners, asset managers and companies:

- 73 asset owners in the GFANZ Net Zero Asset Owner Alliance, including pension funds, Sovereign Wealth Funds (SWFs) and insurers, with \$10.6 trillion AUM.²³
- 236 asset managers in the GFANZ Net Zero Asset Managers initiative, with \$57.5 trillion AUM.²⁴ Globally, this represents over 45% of managed assets by the world’s largest institutional investors and asset managers.²⁵
- 2,976 operating companies worldwide reportedly track and disclose their Scope 3 emissions to the [Carbon Disclosure Project](#) (CDP), as part of CDP’s partnership with the Science Based Targets Initiative (SBTi).²⁶ They range from large corporations to small and medium enterprises (SMEs), and are collectively valued at more than \$38 trillion, presenting one-third of the world’s publicly-listed market cap.²⁷
- In the U.S., 70% of the S&P 500 companies evidently disclose Scope 3 emissions through CDP, SBTi or their own means.²⁸
- Many of these companies are also included in S&P’s ‘Net Zero Index’, which has a market cap of \$27.8 trillion, or 69% of the total value of the S&P.²⁹

²³ UN-convened [Net Zero Asset Owner Alliance](#) (2022). (noting “We are an international group of 73 institutional investors with \$10.6 trillion in assets under management, delivering on a bold commitment to transition our investment portfolios to net zero greenhouse gas emissions by 2050.”)

²⁴ [Net Zero Asset Managers initiative](#) (noting “236 asset managers, with \$57.5 trillion in assets, have committed to achieve net zero alignment by 2050 or sooner”)

²⁵ Willis Towers Watson Thinking Ahead Institute, “[The Asset Owner 100, 2021](#)” (2021). (noting, the \$10.6 trillion of GFANZ Asset Owners tracking Scope 3 emissions represent 45.1% of the \$23.5 trillion AUM of the world’s top 100 asset managers, as assessed by Willis Towers Watson in 2021)

Willis Towers Watson Thinking Ahead Institute, “[Top 500 managers see assets hit record](#)” (2021). (noting, the \$57.5 trillion of GFANZ Asset Managers tracking Scope 3 emissions represent 48.1% of the \$119.5 trillion AUM of the world’s top 500 asset managers, as assessed by Willis Towers Watson in 2021).

²⁶ Science Based Targets Initiative, “[Companies Taking Action](#)” (2022). (noting, 2,967 operating companies participate in SBTi verification which, which requires “companies to provide 100% of their GHG emissions for validation”, and which “must commit to measure and reduce their scope 3 emissions”).

Noting also, that beyond the 2,967 operating companies whose Scope 3 assessments are verified by Science Based Targets Initiative (SBTi), there are many additional companies assessing Scope 3 emissions as part of their own tracking or other third-party programming, in addition to the SBTi data referenced here.

Another report in 2020 claimed that only 18% of MSCI ACWI companies reported any category of Scope 3 emissions. In fact, only one Scope 3 category was reported by more than 6% of companies, and that is “business travel,” reported by just over 7% of companies – the choice to disclose this may be simply due to business travel being easy to measure, and perhaps not due to materiality. MSCI blog post, “[Scope 3 Carbon Emissions: Seeing the Full Picture](#)” (2020).

²⁷ Science Based Targets Initiative, “[SBTi Progress Report 2021](#)” (2021). (noting SBTi companies committed to cut emissions “representing more than one third (\$38 trillion USD) of global market capitalization ... Global market capitalization has been estimated based on the MSCI ACWI Index which equals to around \$93.76 trillion as of February 2022. Market capitalization data of SBTi companies was retrieved from Bloomberg with the date of 31 December 2021”)

²⁸ Subodh Mishra, “[Transparency Paves the Road to Net Zero](#)” (2022) in Harvard Law School Forum on Corporate Governance. (noting, 70% of companies in the S&P 500 have disclosed Scope 3 emissions.)

²⁹ S&P Global, [Net Zero 2050 Paris-Aligned ESG Index Factsheet](#) (2022).

- 66% of S&P 500 companies have publicized commitments to reduce emissions or achieve “net zero” in a published timeframe, but most have not been scientifically verified.³⁰

By anyone’s reckoning, the above demonstrates that an enormous number of corporations, asset owners and asset managers have made commitments that a reasonable investor would assume are backed up with data, systems and strategies that measure Scope 3. Because the commitments to Paris-aligned “net zero” are impossible to achieve without the inclusion of Scope 3 emissions, the taxonomy of the Proposed Rule should not be viewed as overly burdensome. But could it be that the largest and most prestigious asset owners, asset managers and corporations are making promises without spending what is required to measure and manage those commitments? Unfortunately, we do not know the answer, and the “data” on corporate actions regarding Scope 3 emissions is scattered across press releases, annual reports, company websites and sustainability reports and is not at all standardized or verifiable by anyone. Given this situation, issuers have no incentive to be accountable for their emissions, and investors have no way to either punish the bad actors or reward the good ones.

This is the problem that the Proposed Rule addresses by establishing a requirement for timely, standardized, comparable, efficient, reliable, and meaningful disclosures of Scope 3 emissions. By making a fair assumption that the commitments already made by institutional investors and companies are being accurately measured and managed, the Commission is correct to assume that the requirements under the Proposed Rule are not overly costly or burdensome. However, while it is very unfortunate, the truth is that the technology, processes, and systems are not in place to provide the kind of certainty about the Scope 3 data that is presumed in the Proposed Rule **at this time**.

The 2020 report of the Commodity Futures Trading Commission report, “Managing Climate-Related Risks in the US Financial System”, endorses the principle being followed by the SEC in the Proposed Rule. Specifically, it says, “As reliable transition risk metrics and consistent methodologies for Scope 3 emissions are developed, financial regulators should require their disclosure, to the extent that they are material.”³¹ Although Scope 3 emissions standards have been discussed for over ten years, there is still a dearth of tools for verification, reporting systems, and monitoring frameworks that capture the GHG footprint of a product from suppliers to consumers. Scientists are working to solve this problem, to give more credibility to Scope 3 reporting.³² Because at this time, reliable metrics and consistent methodologies for measuring

³⁰ Grace O'Donnell, [“Climate commitments from S&P 500 companies remain unclear despite emissions goals: Morgan Stanley”](#) (2021) in Yahoo Finance. (noting, according to Morgan Stanley Research, 66% companies in the S&P 500 have set targets to reduce greenhouse gas emissions, “However, only 29% of S&P 500 companies have implemented or plan on implementing science-based targets, which create a clearer pathway to decarbonization.”)

³¹ CFTC, [“Managing Climate Risk in the U.S. Financial System”](#) (2020).

³² As discussed, Scope 1–3 calculations of GHG inventory across company operations and value chains rely on the variable accuracy, monitoring and veracity of companies’ data. For product-oriented manufacturers, alternative methods such as a life-cycle assessment (LCA) can also utilize information of upstream GHG emissions along their sector’s supply chain, which may be more reliable and historical than a company calculating its specific value chain (Scope 3) GHG inventory. However, LCA methods also have limitations, particularly for companies with wider product offerings, broad operations or those in the service sector. More information on LCA methodology as a resource, alternative or complement to GHG inventory calculations are available at:

Greenhouse Gas Protocol [“Product Life Cycle Accounting and Reporting Standard”](#) (2011).

Carnegie Mellon University, [“Economic Input-Output Life Cycle Assessment”](#) (2006).

Julie Sinistore and Praneet Arshi [“Similarities, Differences and Synergies of Life Cycle Assessment and Greenhouse Gas Inventory Methods”](#) (2022) in CSRWire.

Scope 3 emissions do not exist. Scope 3 emissions data may not be directly available to an issuer and would have to be obtained from its suppliers, customers and other third parties, over whom the issuer seldom has the power (or ability) to collect or verify. Even the best-resourced investors would have a difficult time making an efficient comparison of existing disclosures, which puts the financial burden for finding the information on the investor—when it should rest with the issuer. Different companies of different sizes will be able to pay for or otherwise extract this information to various degrees, and to varying degrees of quality, all which defeats the purpose of creating standardized information.

The Proposed Rule attempts to address these problems by phasing in the Scope 3 data, allowing the use of estimates, exempting small companies, allowing safe harbors and other important carve-outs and caveats to give comfort to issuers,³³ but combined with the detail required throughout the Proposed Rule, we do not believe the best balance has been reached. While we wish it were not so, based on our experience as investors and board members dedicated to the value proposition posed by the global transition away from fossil fuels, we do not believe that companies or investors or regulators are ready for the detail, scope and costs of Scope 3 reporting that is required in the Proposed Rule. Because it is impossible to give certainty (as recognized by the Commission in all of the carve-outs), the Proposed Rule simply is not useful for investors, and cannot be subject to SEC oversight in a meaningful way.

Treating all 15 categories of Scope 3 emissions with the same broad strokes obscures the underlying variation in magnitude, controllability, and methodology among them (especially relative to the simplicity of Scope 1 and 2). With these inherent challenges, some market participants have jumped to the conclusion that Scope 3 should be entirely jettisoned from the Proposed Rule. **This is not a reason to abandon the objective of Scope 3 disclosure, but to promulgate a disclosure regime now that will jumpstart the development of the needed technologies, metrics, tools, and methodologies that will lead to timely, standardized, comparable, efficient, reliable, and meaningful disclosures of Scope 3 emissions.**

We encourage the Commission to consider that not all issuers should be required to disclose all 15 categories of Scope 3 emissions immediately. This would be unnecessarily costly and time-consuming, probably inaccurate, and in many cases, of limited value to investors. Instead, the Commission should consider providing guidance toward a narrower subset of Scope 3 categories that are most meaningfully calculated, starting with the largest emitters. Importantly, this choice should not be left entirely to issuers as this would perpetuate the data inconsistency we see today.³⁴

Thus, rather than advising the SEC to discard its well-informed aspirations and the attendant detailed requirements for metrics and presentation regarding Scope 3 in the Proposed Rule, we think the Commission should largely **keep the Proposed Rule but consider more granularity in reference to Scope 3 categories. Further, it should acknowledge that a company typically can exercise influence over its choice of suppliers (i.e., “upstream”), though it may have less control or certainty with respect to the use of its products by its consumers (i.e., “downstream”). Over time, more accurate measurement, or the ability to make sector specific reasonable assumptions will develop. In order to allow for these advancements in full public view, In-Cap believes the SEC should provide for another three years to**

³³ For instance, as an example of the Proposed Rule’s flexibility toward Scope 3 reporting, the Proposed Rule allows issuers to report on whichever categories of Scope 3 are relevant to their businesses

³⁴ For example, CDP has just published such guidance: CDP, “[CDP Technical Note: Relevance of Scope 3 Categories by Sector](#)” (2022).

allow investors, issuers, accounting firms, public policy experts, technologists, and regulators to work together for the desired objective of the Proposed Rule.

We propose that from 2023 to 2026 the disclosures be furnished but not filed. This will allow companies and industries to get the necessary systems in place to collect and report the data, become accustomed to the requirements and costs of the Proposed Rule, and have their performance upgraded by the inevitable technological advances that will emerge between now and 2026.³⁵ This also allows companies and industries to improve their systems, tools, and data over time and for it to be public as is it is being perfected, with no legal exposure.³⁶ A delay until 2026 is preferable to the exclusions, ability to disclose “poor data quality”, “ranges”, “estimates”, “descriptions of data gaps” and other weak protections for issuers that are currently in the Proposed Rule regarding Scope 3.

In-Cap believes that the force of issuer, investor, think tank, and media interest is such that the companies with the best disclosures will be the leaders—reflective of their appropriate internal management of climate risks and opportunities—and that our proposal will create what we at In-Cap call a “race to the top.” Our proposal will lead to the development of the climate disclosure tools that are needed and can be agreed upon among companies, investors, advisors, and regulators.

In addition, we believe the requirements in the Proposed Rule for assurance of the disclosed climate information are needed to ensure that we receive accurate, relevant, and consistent information about emissions. However, there is not enough expertise to make this possible in the timeframe in the Proposed Rule. If the Commission delays the legal enforcement of assurance until 2026 there will be time for accounting and other relevant firms to develop skills and systems to make assurance possible and it will not be necessary to have the phasing in of such assurance as is now contained in the Proposed Rule.

The Proposed Rule should make clear that as the metrics, technologies, methodologies, and rules become more definitive, which we assume will be 2026, issuers will not be allowed to rely on “poor data quality”, “ranges”, “estimates” or other data gaps in avoiding legal accountability. We believe that the Commission should be clear in the final rule that the lack of legal liability for disclosures of Scope 3 only exist until 2026.

In other words, the SEC should now set the ultimate objective of Scope 3 disclosure to be applied in 2026, allowing a full three years where issuers can work with investors, advisors, and regulators to prepare for legally binding disclosures in 2027 annual reports.

It is vital that our proposal is not misunderstood as a delaying tactic for climate-related disclosures, but as a way to stimulate the tools that are needed to make them timely, standardized, comparable, efficient, reliable, and meaningful. In this regard, we see the potential for what we call “the Waxman-Markey Effect”

³⁵ The European Union (EU) has announced that 2026 is the year when they will begin to impose a [carbon border adjustment tax](#). This will be an enormous motivator for all global companies to acquire recognized legitimate data about their carbon footprint. Along with the requirements of the Proposed Rule, this will mean that industry will be preparing until 2026 for legitimate, verifiable reporting. This is another reason to implement requirements of the Proposed Rule in 2026, for filing in 2027.

³⁶ The Proposed Rule should make allowance for the possibility that even by 2026 it will not be possible to have the quality of data needed to satisfy the rule on an annual basis in time for the filing of a company’s 10-K. The Proposed Rule should include an explicit option that until there is widely accepted and understood climate data, that every issuer will be allowed to file such data up to six months after filing the 10-K, provided it will be incorporated into the earlier filed documents.

for the Proposed Rule. As background, the “Waxman-Markey Bill” —known formally as the American Clean Energy and Security Act of 2009³⁷—was a far-reaching climate legislation bill which was approved by the House of Representatives but was never brought to the Senate floor for a vote. Even though it failed to become law, it sent shock waves through the electric energy industry and contributed to a slow but steady move away from coal in the United States. We believe that the Proposed Rule will have the “Waxman-Markey Effect” in that it will turbocharge the gravity with which issuers, managers and investors force the development of the technologies, processes and systems that will make their “net zero” commitments more concrete and cost-effective, even during the period from 2023 to 2026 when it is not legally binding.

Comments Regarding Financial Statement Disclosures in the Proposed Rule:

Because climate-related impacts or risks can materially affect a company’s financial position and operations, we support in principle the inclusion of some climate-related information in the financial statements. However, the Proposed Rule requires complicated presentation requirements and extensive disclosures on a line-by-line basis. The six general lines of disclosure in financial statements are well understood and trusted. All these lines are presented at an aggregated level. Yet, the Proposed Rule requires specific disaggregated climate disclosures on a line-by-line basis if the **absolute** value of the climate impact on the line item is **1%** or more of the total line item. As stated in the Proposed Rule, “...for purposes of determining whether the disclosure threshold has been met, a registrant would be required to aggregate the absolute value of the positive and negative impacts on a line-by-line basis, which we believe would better reflect the significance of the impact of the climate-related events and transition activities on a registrant’s financial performance and position.”³⁸ To comply with this requirement, the issuer is required to disaggregate dozens, if not hundreds, of individual climate factors, including both actual and hypothetical factors. This is too heavy a burden on issuers and of too little value to investors.

Although we believe that many of the requirements of the Proposed Rule are possible to meet if the timeline for their implementation is delayed until 2026, as we discussed above regarding Scope 3, we do not see sufficient value of the low level of materiality set at 1% and the use of an absolute (vs. net) value analysis in financial statements.³⁹ In fact, the granularity of the requirements in the Proposed Rule makes any pretense toward materiality as the standard for the rule to be ephemeral. The massive amounts of data the Proposed Rule would produce might perversely exclude much decision-critical data. In-Cap believes that in requiring absolute value impact at 1% of each line item the Commission is demanding too much information that will not be valuable to investors. In this regard, we are guided by the insight of Herbert Simon, the influential social scientist, who said, “A wealth of information creates a poverty of attention.”⁴⁰

³⁷ <https://www.congress.gov/bill/111th-congress/house-bill/2454>

³⁸ U.S. SEC “[The Enhancement and Standardization of Climate-Related Disclosures for Investors](#)” (2022), 17 CFR II.F.2. “Financial Impact Metrics” (Release Nos. 33-11042; 34-94478; File No. S7-10-22), p122.

U.S. SEC “[The Enhancement and Standardization of Climate-Related Disclosures for Investors](#)” (2022), 17 CFR 210.14-02(b)(2) “Climate-related metrics” (Release Nos. 33-11042; 34-94478; File No. S7-10-22), p453.

³⁹ Under the Proposed Rule, if a company has ten climate-related items which each represent 0.10% of the line item, but 5 are positive and 5 are negative, each item will have to be listed in the financial statement because they total 1%, even though the net of each item is zero, as proposed in II.F.2, p122.

U.S. SEC “[The Enhancement and Standardization of Climate-Related Disclosures for Investors](#)” (2022), 17 CFR II.F.2. “Financial Impact Metrics” (Release Nos. 33-11042; 34-94478; File No. S7-10-22), p122.

⁴⁰ Herbert A Simon “Designing Organizations for an Information-Rich World” in “Computers, Communications, and the Public Interest” (1971), edited by Martin Greenberger.

In-Cap sees little value to investors of this level of disclosure now or in the future. The absolute value test is not helpful and 1% is not sufficiently material. The Commission has clearly thought a lot about the value of line-item disclosures, and we agree that they are valuable. Because we see value in including climate impact disclosures in the financial statements, we propose that the Commission ask for **net** values that aggregate to **5%** of each line item.

The SEC has not affirmatively endorsed a general bright-line numerical materiality test in other rulemakings. In SEC Staff Accounting Bulletin No. 99, the SEC addressed the general “rule of thumb” developed over time that considered 5% as an appropriate threshold in making materiality determinations.

The SEC provided as follows: “The use of a percentage as a numerical threshold, such as 5%, may provide the basis for a preliminary assumption that – without considering all relevant circumstances – a deviation of less than the specified percentage with respect to a particular item on the registrant’s financial statements is unlikely to be material. The staff has no objection to such a ‘rule of thumb’ as an initial step in assessing materiality. But quantifying, in percentage terms, the magnitude of a misstatement is only the beginning of an analysis of materiality; it cannot appropriately be used as a substitute for a full analysis of all relevant considerations. Materiality concerns the significance of an item to users of a registrant’s financial statements. A matter is ‘material’ if there is a substantial likelihood that a reasonable person would consider it important.”

Registrants often use 5% as a general rule of thumb but, and as is the case for any materiality determination, it is important to consider all the relevant circumstances irrespective of the numerical threshold.⁴¹ The alternative to using a percentage in the Proposed Rule would be for the Commission to be very prescriptive in their definition of what is “material”, but In-Cap agrees with the overall flexible approach the SEC has taken in the Proposed Rule by allowing companies to determine key climate impacts for their individual businesses which will differ greatly across industries and companies.

Moreover, companies should be encouraged to include qualitative discussions with respect to the financial statements, much like the qualitative discussions in financial statements about, for instance, loss contingencies. In the case of loss contingencies, as with climate, there are assumptions and extrapolations used, but unlike climate, loss contingency discussions are guided by many years of auditor and SEC guidance. Climate information needs more time for the appropriate guidance.

In addition to changing the materiality standard for climate disclosure in the financial statements in the Proposed Rule, In-Cap believes that the same timing proposed above for Scope 3 should be in place for the financial statement disclosures. The Proposed Rule should explicitly say, as described above relating to Scope 3, that during 2023 to 2026 there will be no legal liability for the climate-related disclosures.⁴² This timeframe makes particular sense with respect to financial statements because of the common

⁴¹ U.S. SEC “[Staff Accounting Bulletin: Materiality](#)” (1999), No. 99. (noting, the Bulletin amends the Materiality section on Financial Reporting Matters in the Commodity and Securities Exchanges Code of Federal Regulations, on “the use of a percentage as a numerical threshold, such as 5%”);

Chairman Arthur Levitt, “[The Numbers Game](#)” (1998) in remarks at the New York University Center for Law and Business. (noting, the former Chairman’s remarks that “materiality is not a bright line cutoff”).

⁴² Until 2027, there should be a specific safe harbor for climate disclosures in financial statements because safe harbor applies only to forward-looking statements and would not by definition cover disclosures in the financial statements.

understanding of financial disclosures. By rule, financial information includes two years of prior comparable data for comparison. If the Proposed Rule were to go into effect in its current form, it would be impossible for any company to provide two years of historic climate data. But, if the SEC amends the Proposed Rule to allow the requirements for the financial statements to be furnished but not filed for 2023-2026, each company will then have comprehensive numbers for the two years prior to 2026. This is a compelling reason to delay the implementation of the Proposed Rule until 2026.

Comments Regarding Scenario Planning in the Proposed Rule:

In-Cap specifically focuses on and directly engages with companies that are strategically resilient to the physical, transition and liability risks posed by climate change, and does a deep analysis of how potential investee companies may be placed to take advantage of and supply technologies and opportunities in a low carbon world. We do not simply use a set of metrics that only provides static information and does not achieve our objective of driving positive environmental change and shareholder return. To this end, In-Cap supports the mandatory disclosures in the Proposed Rule that gives investors transparency as to the overall strategic planning of each company with respect to its carbon footprint.

As stated by the Market Risk Advisory Committee of the U.S. Commodity Futures Trading commission, “Scenarios illustrate the complex connections and dependencies across technologies, policies, geographies, societal behaviors, and economic outcomes as the world shifts toward a net-zero emissions future. Scenario analysis can help organizations integrate climate risks and opportunities into a broader risk management framework, as well as understand the potential short-term impact of specific triggering events.”⁴³ While it must be acknowledged that climate-based scenario analysis has its limitations, In-Cap believes it is a tool that should be developed and required to be disclosed at two different levels. First, scenario planning that is based on hypotheticals and is deemed by the issuer to be competitively sensitive information should not require public disclosure, and if disclosed should have a legal safe harbor for the issuer. The second type of scenario planning that is based on a consistent and common set of assumptions developed by policymakers and industry experts should be provided as discussed in the Proposed Rule.⁴⁴ This dual approach will give investors and companies comparable information about the true extent of climate-related risks and opportunities for each company and not expose confidential information.

In-Cap believes this is helpful because while it is impossible to predict the future, the scenario planning is a systemic process that helps translate climate risk into financial risk. Scenario analysis puts contours around possible financial outcomes by illustrating the complex connections and dependencies across

⁴³ Climate-Related Market Risk Subcommittee (2020). “[Managing Climate Risk in the U.S. Financial System](#)” for the U.S. Commodity Futures Trading Commission Market Risk Advisory Committee, page iv.

⁴⁴ In this context, we encourage the Commission to extend the authority of the Investor Advisory Committee, and the Committee’s relevant subcommittees of Investors as Owners, Purchasers and the newly 2021-established Disclosure Subcommittee, to include final determination of issues that need to be addressed under our proposal to make them final in 2026.

technologies, policies, geographies, societal behaviors, and economic outcomes that are at stake as the world moves to “net zero”.^{45,46}

This approach is largely incorporated in the Proposed Rule and will allow capital to be allocated with meaningful analysis of each registrant’s understanding of their exposure to climate risk. It provides investors with a more refined measure of the long-term cost of capital, as well as risks to a company’s margins, cashflow and valuations, creating more certainty about a company’s management skills, valuation multiples and cost of capital. Importantly, this will allow capital allocation to the largest emitters of GHGs if they can prove to their investors that they are on the road to reducing their emissions, rather than the current trend to disinvest from these companies. This will allow investors to benefit from the scale of the research and development, distribution and marketing of the largest energy, transport and building companies if they are able to explain their transition to “net zero” in a transparent and meaningful way. In fact, we believe such allocation of capital should achieve a better, more expedient, more inclusive, and more durable outcome for markets and for the planet with respect to climate change.

This has always been the focus of In-Cap’s investment strategy, and it gives us no pleasure to note that if investors had used this approach over the past several years, the current energy emergency caused by Russia’s invasion of Ukraine and high oil prices would be much less problematic for the United States and the world. A greater understanding of the transition of the global oil and gas companies would have provided a roadmap to both cleaner energy for the future, and accommodation of consumer demands. The framework and taxonomy of the Proposed Rule addresses this issue, if fully implemented by investment managers trying to address the energy crisis.

Therefore, subject to the carve-out for scenario planning based on internal competitively sensitive information, In-Cap supports the climate-related mandatory disclosures in the Proposed Rule that capture the strategic planning and the ultimate impact of carbon abatement efforts by companies and within portfolios. **In essence, the objective of climate-related actions by the SEC should be to aid managers and investors in their objective to understand a company’s risks and opportunities in the transition to a low (or zero) carbon economy. As such, the disclosed information in the Proposed Rule that is based on a company’s strategic position in the achievement of the necessary reduction in carbon emissions, not simply static quantitative or qualitative data, is vitally important. A list of static disclosure factors that mainly incentivize investors to divest from currently carbon-rich companies while making little impact on solving the problems of climate change can be avoided by the full array of climate-related data in the Proposed Rule.**

As we now know, the mitigation of climate risks cannot be captured by static backward-looking reports on Scope 1, 2 and 3 GHG emissions, or projected revenue from less carbon-intensive sources or holdings of proven fossil fuel reserves. Indeed, to quantify the impact of a company’s carbon footprint, it is vital that legal transparency into a company’s operations goes beyond the static and moves to the strategic,

⁴⁵ The analysis should not be considered forecasts, but data-driven narratives that give investors critical insight to how companies are preparing for the impact of the different physical, transition and liability climate risks that are inherent in today’s economy and be protected by a safe harbor rule. As stated by the U.S. Commodity Future Trading Commission Climate-Related Market Risk Subcommittee in page 74 of the [“Managing Climate Risk in the U.S. Financial System”](#) report, “Scenario analysis is less about forecasting the most probable outcomes than it is a ‘what-if’ analysis of different potential projections of the future.”

⁴⁶ Scenario analysis is also suggested by the TCFD framework, as detailed in the 2016 TCFD Technical Supplement [“The Use of Scenario Analysis in Disclosure of Climate-Related Risks and Opportunities.”](#)

which is successfully achieved by the Proposed Rule. It requires disclosures that shed light on a company's specific climate strategy toward carbon neutrality in a "just transition" with factors that are material to long-term value creation and global carbon abatement. Under the Proposed Rule, investors will be able to assess which companies are strategically resilient to the physical, transition and liability risks posed by climate change, as well as how they may be placed to take advantage of or supply technologies and opportunities in a low carbon world.⁴⁷

While In-Cap encourages the disclosure of climate-related scenario planning as envisioned in the Proposed Rule, with the above discussed legal protections until 2026, it is also vital that the Commission permanently protects issuers from having to reveal competitively sensitive information. Because all information disclosed under the Proposed Rule will be easily searchable on EDGAR, it could be very easy for competitors to reverse engineer the plans of other companies. This is contrary to the objectives of the SEC mandate⁴⁸ and the Proposed Rule should be amended to clearly protect competitively sensitive information of any issuer, as determined by such issuer.

Comments Regarding the Use of Carbon Offsets in the Proposed Rule:

With the huge number of companies, asset owners and asset managers making "net zero" commitments, it is vital that the Proposed Rule include guidance for how issuers should treat carbon offsets. "Net zero" implies the use of emissions offsets or carbon capture, including nature-based solutions. It is worth noting that carbon offsets alone cannot achieve true "net zero"; thus, the emergence of the concept of carbon "insetting", which reflects a company directly negating emissions within its own value chain.⁴⁹ While both will be vital elements to reducing carbon emissions, neither is in place yet, even though it is predicted that carbon offsets alone could become a \$50 billion or more market.⁵⁰ As noted by Joseph Aldry of the Harvard Kennedy School, "Mandating standardized disclosure of offsets could improve transparency in voluntary carbon markets, enable improved carbon offset price discovery, promote more cost-effective attainment of corporate emissions goals and inform investors about corporate progress on these goals. The current offsets market, however, is characterized by substantial heterogeneity in offset prices in terms of the type

⁴⁷ See Recommendation No. 2: "Assume a price for carbon" from [In-Cap 2021 Comment Letter on Climate Change Disclosures](#) to the SEC (2021).

⁴⁸ The Securities Act of 1933, as amended, and Securities Exchange Act of 1934, as amended, have provided companies with means to request "confidential treatment" or "nondisclosure", respectively, of information which is competitively sensitive (17 CFR 230.406 and 17 CFR 240.24(b)2, below). With the addition of recent rules, such as to 17 CFR 229 in 2019 or and CF Disclosure Guidance in 2021 (below), companies may also redact competitively sensitive information in EDGAR filings, without submitting contemporaneous requests for confidential treatment.

Securities Act of 1933, as amended, "[Confidential treatment of information filed with the Commission](#)", CFR 230.406. Securities Exchange Act of 1934, as amended, "[Nondisclosure of information filed with the Commission and with any exchange](#)", 17 CFR 240.24b-2.

US SEC "[Confidential Treatment Applications Submitted Pursuant to Rules 406 and 24b-2](#)" (2019), CF Disclosure Guidance: Topic No. 7.

US SEC "[New Rules and Procedures for Exhibits Containing Immaterial, Competitively Harmful Information](#)" (2019), 84 Fed. Reg. 12,674.

⁴⁹ World Economic Forum, "[Explainer: Carbon insetting vs offsetting](#)" (2022).

⁵⁰ Taskforce on Scaling Voluntary Carbon Markets (TSVCM) "[Final Report](#)" (2021). (noting that, "market size of a well-functioning voluntary carbon market in 2030 could be between \$5 billion and \$30 billion at the lowest end of the spectrum, and up to over \$50 billion at the highest end.")

BloombergNEF, "Carbon Offset Prices Could Increase Fifty-Fold by 2050" (2022). (noting that, "if done correctly, a [carbon offset market] could be rewarded with a market valued at more than \$550 billion by mid-century.")

of project; region; buying sector; verification standard; and, quite likely, by environmental integrity.”⁵¹ The Proposed Rule does accommodate some of these problems by asking issuers to disclose the volume of offsets, the type of source projects used, how a company authenticates its offsets through the use of verification standards or established organizations, and reference to carbon offset provisions from the EPA and Department of Agriculture. However, just as we discouraged the Commission above from providing too many caveats for Scope 3 disclosures, we believe that none of these caveats make up for the lack of certainty around the current carbon offset market. In fact, investors and companies cannot legitimately measure and manage the wide diversity of carbon mitigation and sequestration methods at this time.

Like Scope 3 reporting, the carbon offset market is not ready for meaningful and extensive use by companies and investors, but the SEC is correct to include this provision because when it becomes legally binding, it will be a vital component for the issues of importance to investors.⁵² As with the “Waxman-Markey Effect” referenced above, the inclusion of offsets in the Proposed Rule alone may help catalyze a material demand for legitimate offsets and carbon capture. But time is needed for greater technological advances and regulatory guidance on quality standards for carbon offsets and insets. **In conclusion, all use of offsets from 2023-2025 should have full safe harbor exemptions and the Commission should look toward the private and philanthropic sectors to establish the necessary standards which should become legally enforceable in 2026.**

Support for Immediate Disclosure of Issuers’ Internal Price on Carbon in the Proposed Rule:

Considering the broad global support for a price on carbon,⁵³ In-Cap believes that it is prudent and necessary to mandate that listed companies begin to plan for the eventuality of a price on carbon. In-Cap endorses the section of the Proposed Rule that requires issuers to disclose the price of carbon that they assume in their near-, medium- and long-term strategic planning and to require companies to provide investors with their assumed price of carbon in their climate-related scenario analysis. It is correct that the assumed price of carbon should inherently be incorporated in 10-Ks, in the same way that companies disclose commodity, interest rate, foreign exchange and other risk factors. This gives investors visibility on a company’s operations, investment decisions, asset valuations and enterprise value. This price, even if it is considered to be zero, gives investors a meaningful way to analyze the thinking of management toward the physical, transition and liability risks of the company. While the requirement itself would be broadly applied to all companies, the information would quickly become comparable within specific industries and geographies. Requiring the disclosure of a registrant’s assumed price of carbon forces them to give investors the basis for their own operational and strategic plans regarding climate. For purposes of consistency, we suggest that this disclosure be furnished between 2023 and 2025 and filed in 2026.

⁵¹ Marc Hafstead and William Pizer, et al. [“Even with Moves toward Transparency, Corporate Climate Pledges and Carbon Offsets Will Be Complicated”](#) (2022).

⁵² The Integrity Council for the Voluntary Carbon Market (ICVCM), chaired by former Commissioner Annette L. Nazareth and co-founded by Mark Carney as the Taskforce on Scaling Voluntary Carbon Markets (TSVCM), is an independent governance body for voluntary carbon markets, which is currently setting standards, ensuring quality and establishing frameworks to improve market integrity and eventually scale its growth as a means for reaching net zero.

⁵³ Sixty-eight carbon pricing initiatives have been implemented by countries, regions or subnational governments around the world, and 73 countries have signed the “Put a Price on Carbon Statement” of the World Bank Group: World Bank Group, [“Carbon Pricing Dashboard”](#) (accessed 2022). World Bank Group, [“73 Countries and More Than 1,000 Companies and Investors Support a Price on Carbon”](#) (2014).

Considerations Beyond the Proposed Rule:

With respect to Scope 3 and scenario planning in the Proposed Rule, In-Cap believes there are two prevailing headwinds which must be considered in drafting the final rule. First, the Commission must protect against some well-documented, negative, and unintended consequences of poorly conceived climate disclosures, which we outlined to the Commission [in our letter dated September 8, 2021](#). The final rule should not exacerbate the trend shown in our 2021 letter toward fossil fuel divestments, which inevitably leads to extreme price pressure caused by decreased supply; the privatization of the fossil fuel industry; or its transfer to nations that do not actively engage in the reduction of carbon emissions. If the final rule does not provide meaningful climate data to investors that encourage the transition from fossil fuels to clean energy, there is a danger of not only a worse climate situation, but also diminished trust in issuer reporting.

Second, while it is not within the scope of SEC action, the key restraint in the drive toward “net zero” is consumer demand. The Proposed Rule only deals with the role of suppliers, but government policy that places a true cost on carbon is the only effective way to deal with demand and unleash the full power of the capital markets. While only Congress can establish a national price on carbon, In-Cap believes that the Proposed Rule will turbocharge the development of the tools that are necessary to meet the clear demands of investors and the market and will ultimately be subject to price signals from a global price on carbon—but until that policy is adopted by our government, the onus on issuers will be an incomplete answer to the problem of climate change.

Conclusion:

In conclusion, amendments to the Proposed Rule expressed in this letter are driven by fidelity to the integrity of the financial statements and all filings with the SEC, not by an objection to the necessity, wisdom or usefulness of the Proposed Rule. **Because the methodologies, technologies and systems are not in place to collect and report timely, standardized, comparable, efficient, and meaningful measures of climate risk, we propose that the Proposed Rule should not become legally binding until 2027.** By that time, we believe that if the Proposed Rule is promulgated with furnished—not filed—information, a virtuous cycle will be created and climate-related disclosures in 2027 will have the same certainty, reliability, and usefulness as financial data today.⁵⁴

⁵⁴ If the technology, standards and systems are not in place by 2026, the Commission should extend the legal implementation date for the Proposed Rule. The Commission should establish a board of experts to monitor and decide on the readiness of market measures to make the Proposed Rule legally binding.

Thank you very much for your consideration of our comments and we remain very pleased to answer any questions about our submission. If you would like further discussion, please contact Philippe Pradel, Chief Compliance Officer and Legal Counsel, at philippe@in-cap.com.

Sincerely,



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