SKY HARBOR
CAPITAL MANAGEMENT
Responsible Investing for a Sustainable Future

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[redacted]

June 17, 2020 **Delivered Electronically**

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

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

Dear Ms. Countryman:

SKY Harbor Capital Management, LLC ("SKY Harbor," or "We") is a U.S.-based, independent SEC-registered investment adviser with $5 billion in discretionary assets under management ("AUM") focused exclusively on active investing in below investment grade corporate debt securities ("High Yield") issued predominantly by U.S. corporations across major sectors of the U.S. economy on behalf of institutional investors and private wealth managers globally.

As stewards of our clients' and investors' assets and signatory to the Investor Agenda's 2021 Global Investor Statement to Governments on the Climate Crisis,[1] the UN Principles for Responsible Investment (since 2015),[2] and the Net Zero Asset Managers Initiative ("NZAM"),[3] SKY Harbor welcomes this opportunity to commend the Commission and respectfully offer our perspective as a boutique High Yield investment manager in responding to the Commission's invitation to comment on File No. S7-10-22: The Enhancement and Standardization of Climate-Related Disclosures for Investors (the "Proposed Rule").

SKY Harbor applauds the Commission's efforts because we believe that many provisions in the Proposed Rule if adopted will result in decision-useful, consistent, and comparable climate-related risk information and data that is vastly improved compared to disclosures that are currently available, particularly as it pertains to issuers in the High Yield market. We also, however, believe that the scope of Proposed Rule is

[1] See FN 58 and accompanying text in the Proposed Rule
[2] See FN 59 and accompanying text in the Proposed Rule
[3] See FN 61 and accompanying text in the Proposed Rule

not yet sufficiently calibrated to take into account bond market investors, who provide more financial capital to U.S. corporations than equity investors by several orders of magnitude.[4]

The shareholder primacy model that characterize many SEC disclosure rules, we respectfully suggest, often overlooks the information needs of bond holders. Bond holders, for example, do not have proxy voting rights.[5] Conventional wisdom views the relationship of bond holders to a company as strictly contractual and not necessarily in need of SEC protection. We believe this conventional wisdom is outdated in light of the realities and dynamics of the modern-day bond market. For this and other reasons as will be detailed in the discussion that follows, we are advocating in this letter, among other things, that the climate-related disclosures be filed — not furnished — in a registrant's Annual Report and registration statements and not as part of the proxy statement.

We also take this opportunity to make suggestions for the Commission to consider how to bring more High Yield corporate bond issuers of exempt offerings into the same disclosure regime as being proposed for registrants in the public capital markets. We believe, like other observers, that the unfettered trend of companies choosing to go private to avoid regulation or disclosure requirements is detrimental to the long term health of the U.S. capital market.[6]

As a signatory to the Task Force on Climate-related Financial Disclosures ("TCFD"), we appreciate that, rather than attempting to create climate-related disclosures standards *de novo*, the Commission has chosen to rely on external independent expertise by drawing upon and integrating into the Proposed Rule the four pillars (Governance, Strategy, Risk Management, and Targets & Metrics) of the TCFD framework and in one form or another the TCFD's 11 Recommendations. The TCFD framework covers the essential elements of climate risk disclosure that we have strived to incorporate into our proprietary sustainability scoring system (the "Value Rubric"), which is an important part of our investment decision-making process. Our experience leads us to concur with the Commission's reasoning in the Proposed Rule that the TCFD recommendations are broadly supported and used by companies, investors, and securities regulators worldwide. We fully support the Commission's inclusion of a GHG emissions reporting requirement in the Proposed Rule because we expect this information will greatly assist us in meeting our reporting obligations particularly in non-U.S. jurisdictions where we do business. Equally important, the proposed data will further enable us to evaluate for ourselves – with less reliance on costly vendors or rating agency services – environmental, social, and governance risk factors ("ESG") as part of our analysis of the creditworthiness of High Yield issuers in the face of climate change and global decarbonization.

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[4] See FN 20 *infra* and accompanying text.

[5] See our Comments to Question No. 7 in Part II of this letter for further elaboration of this point.

[6] See remarks by SEC Commissioner Allison Herren Lee concerning the "explosive growth of private market" and the need to consider "the opacity of large and important segments of the economy and what that opacity means for investors and public markets" as well as the risk that "this opacity could operate to obscure systemic risks such as those posed by climate change." Speech by SEC Commissioner Allison Herren Lee, Going Dark: The Growth of Private Markets and the Impact on Investors and the Economy, October 12, 2021, available at: https://www.sec.gov/news/speech/lee-sec-speaks-2021-10-12, last visited on June 7, 2022.

Finally, from our perspective as a fixed income investment adviser, SKY Harbor believes the Proposed Rule if adopted furthers the Commission's mission, namely:

- Protecting investors: by facilitating the provision of standardized, comparable, consistent, and decision-useful data and information necessary for professional investors like us to perform for ourselves a complete modern-day due diligence of issuers while seeking to avoid being blindsided by the occurrence of an unconsidered negative ESG event due the absence of quality, readily accessible, and reliable data;

- Maintaining fair, orderly, and efficient markets: by facilitating more accurate pricing of risk in corporate securities issued and traded on the OTC bond markets by virtue of leveling the playing field between issuers and investors concerning differing interests and asymmetric climate-related information regarding matters relating to an issuer's governance, strategic planning, risk management and stated targets and metrics; and

- Facilitating capital formation: by recognizing and validating the notion that the climate-related information needs of investors are "material," which operates through the proposed disclosures to encourage the continued support of U.S. and non-U.S. capital providers, especially as it relates to the U.S. High Yield bond market – a market that has evolved in recent years into one of the principal sources of capital for U.S. corporations.

This letter is organized in three parts. Because our comments are informed by our experience, practices, and perspective as a boutique investment adviser focused exclusively on the active management of long only High Yield bond portfolios[7], Part I of this comment letter is intended to provide context to our comments by offering a relatively high-level overview of how we evaluate High Yield issuers and manage High Yield bond portfolios as it relates to ESG-related disclosures generally including with respect to the proposed climate-related disclosures.

In support of the proposition that the Proposed Rule, if adopted, facilitates the Commission's mission of facilitating capital formation, especially in the High Yield market, we underscore in Part I, the important but perhaps underappreciated function of the High Yield bond market as a major source of capital for U.S. corporations. The corollary to this proposition is the notion that the ESG-related information demands of High Yield investors – the ultimate suppliers of that capital – should be appropriately recognized as "material" as that term is defined in 17 C.F.R. §240.12b-2 under the Securities Exchange Act of 1934[8], and related U.S. Supreme Court case law.[9]

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[7] SKY Harbor invests exclusively in fixed income securities and does not invest in any meaningful degree in the equity securities of publicly listed companies.

[8] "The term 'material,' when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the securities registered."

[9] See *TSC Industries v. Northway, Inc.*, 426 U.S. 438, 449 (1976); See also *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988) and their progeny.

From our vantage point High Yield investors consider sustainability-related information, which includes climate-related information, as important in deciding whether to buy, sell or hold High Yield bonds or interests in High Yield separately managed bond portfolios or collective investment pools. Virtually every RFP or similar questionnaire from a prospective or current client/investor we receive includes questions concerning our ESG-integration and sustainability policies and procedures as applied to our investment products.

Part II contains our comments to selected Requests for Comments in the Proposed Rule and is organized by the same outline headings as in the Proposed Rule and numbered in a manner corresponding to the numbering in the Proposed Rule.

We offer our concluding thoughts and recommendations in Part III, in which, for reasons that follow in this discussion, **we strongly urge the Commission to consider bolstering the currently very modest information requirements under Rule 144A to require issuers of exempt bond offerings under Rule 144A to incorporate the same financial information required of registrants including the climate-related disclosures that are finally adopted by the Commission.**

For convenient reference a table of contents follows.

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Part I: Background and Perspective of a High Yield Investment Manager

As a long only, unleveraged, active High Yield investment manager,[10] SKY Harbor's investment philosophy is to generate investment returns through compounding current income over time while seeking to avoid principal losses. Thus, we are focused on identifying companies in the High Yield market whose debt securities in our judgment are fairly priced and will meet all their interest and principal payments promptly as scheduled. In that regard, as a registered investment adviser, SKY Harbor believes that we have a fiduciary duty to, among other things, conduct a thorough, complete, and continuous due diligence on the High Yield debt securities that we purchase on behalf of clients and investors.[11]

Integrating ESG-risk: an integral part of modern financial analysis

SKY Harbor's due diligence process seeks to include not only all relevant financial risks but also relevant sustainability risks relating to issuers of High Yield securities that we consider for inclusion in our clients' portfolios. We define "sustainability risk" generally to mean any environmental, social or governance ("ESG") event or condition that, if it occurs, could cause an actual or a potential material negative impact on the value of an investment."[12]

Although we respectfully submit that modern-day financial analysis is not complete without integrating an issuer's sustainability-related risks, SKY Harbor does not view ESG-integration as predominating over or diminishing the critical importance of traditional financial analysis, which remains the bedrock of credit-picking across the High Yield universe. Rather, integrating ESG-related risks into the investment process is essentially an exercise in uncovering risks and opportunities that heretofore may have been viewed – perhaps in the last century or early 2000s –as either beyond the scope of traditional financial analysis or beyond the day-to-day concerns of corporate management. We maintain, however, that sustainability-related risk analysis is now increasingly being seen as within the remit of investment analysts and corporate management.[13]

[10] SKY Harbor does not engage in or offer so-called "distressed debt" investment products that involve buying the bonds of firms that have already filed for bankruptcy or are highly likely to imminently do so with the aim of becoming a creditor to a failing company by purchasing its bonds at a fire sale price.
[11] In this comment letter, "clients" and "investors" will be used interchangeable to mean both unless the context suggests otherwise.
[12] See Article 2 (22) of the EU Regulation 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (the "SFDR"), which imposes transparency disclosures by financial participants concerning their policies on the integration of sustainability risks in the investment decision-making process.
[13] Increasingly, boards are viewing ESG as subject to board oversight. See *In re Caremark Int'l Derivative Litigation*, 698 A.2d 959, 970 (Del. Ch. 1996), (a landmark Delaware case that articulated the board's obligation to be reasonably informed by ensuring adequate information and reporting systems exist in the organization that are reasonably designed to provide management and the board with timely and accurate information to reach informed judgments concerning the corporation's compliance with law and its business performance).

As further discussed in this letter, we account for the relatively recent (and seemingly rapid) ascendency of sustainability-related risk analysis as an important complement to traditional financial analysis in the High Yield space due to two factors: (i) the nature of the High Yield market itself, and (ii) a phenomenon we describe as an accelerated reckoning for uncompensated externalities, which stated differently is the idea that the time it takes for chronic risks to transform into acute risks that then become financial risks has greatly accelerated. We believe this phenomenon is increasingly widespread and may also account for the acceptance of sustainability-related risk analysis beyond the High Yield space.

Boardroom acceptance of sustainability and climate-related risk management

As part of our due diligence, we review corporate filings, websites, proxy statements, and company press releases as well as secondary sources of information. In doing so, we note a marked increase in corporate boards stating that a company's sustainability efforts are subject to senior management and/or board oversight. We have also noted a trend among corporations appointing C-suite sustainability officers. We believe boards of public companies are increasingly aware that oversight of a company's sustainability or ESG-related risk management is part of the board's *Caremark* responsibility.[14]

This trend among an increasing number of companies is yet another reason for financial and credit analysts to take stock of and evaluate the scope, nature, and effectiveness of board oversight concerning ESG-related risks. To the extent ESG-related risk analysis succeeds in uncovering risks, investors as well as management can avoid being blindsided by an ESG risk factor that may have been overlooked and thereby unconsidered – but not necessarily unforeseeable – by conventional financial analysis or old-world governance practices due to the absence of or utter failure to consider relevant ESG-related data.

Data Dependency in meeting investor and regulatory demands

Because an effective ESG risk analysis is – just as with conventional financial statement analysis – dependent on standardized, comparable, consistent, and decision-useful information and data, we believe that the Proposed Rule if adopted is very much in keeping with the Commission's mission to protect investors. Without reliable information and data, such as that in the Proposed Rule, investors are unable to perform a complete due diligence, which may leave investment decisions vulnerable to unconsidered ESG-related risk.

Due to a significant non-U.S. investor base and international footprint, SKY Harbor – and similarly situated U.S. registered investment advisers – are subject directly or indirectly to certain non-U.S.

[14] See Sara Bussiere, Jason Halper, Ellen Holloman, Zack Schrieber, Caremark and "Mission-Critical" ESG Company Operations, March 1, 2022, published by Cadwalader, Wickersham & Taft LLP, (explaining recent cases "finding in favor of *Caremark* claims focus on ESG issues and not exclusively on financial oversight: plaintiffs have adequately pleaded claims that a board failed to monitor the safety of food production, comply with pharmaceutical regulations, safeguard the environment, and protect its customers from airplane disasters.") available at: https://www.jdsupra.com/legalnews/caremark-and-mission-critical-esg-6914783/. Last visited on May 4, 2022.

jurisdictions.[15] In recent years, especially during this past decade, many of these jurisdictions have promulgated measures to encourage or compel, among other things, climate-related transparency obligations on investors and corporations alike.[16] These measures, often in the form of statutory or regulatory mandates, are clear manifestations of a trend in global collective action designed to mitigate the rationally undeniable harm from global warming. While smaller in size and resources relative to the mega global investment fund complexes that dominate our industry, SKY Harbor, nevertheless, has a global footprint and is obligated to comply with these and other required disclosures, many of which require GHG emissions and other climate-related data.[17]

In our experience, since the middle of the last decade, institutional investors particularly among our European clients have been seeking socially responsible U.S. Corporate High Yield bond strategies, and the demand for such products has only been increasing. For example, a long-time separately managed institutional account has recently requested us to convert their current High Yield bond strategy into a socially responsible High Yield strategy modeled closely to the socially responsible strategies in SKY Harbor Global Funds, a European public mutual fund not open to U.S. investors, established under the laws of Luxembourg, and managed by SKY Harbor.

In our current initiatives to manage High Yield pooled investment vehicles in the United States and overseas, prospective investors have asked about our ability to incorporate an ESG-integrated investment process. Virtually every Request for Proposal, Request for Information and Due Diligence Questionnaire includes a section asking us to describe in detail our approach to ESG-integration and the goals and objectives of our socially responsible High Yield strategies.

In sum, the Proposed Rule, if adopted, will assist SKY Harbor in meeting these obligations while we continue investing institutional capital in support of U.S. companies dependent upon the High Yield

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[15] Of the € 5.5 trillion AUM in Luxembourg collective investment vehicles, over 20% by AUM are sponsored from the U.S. as of February 2022 according to the Association of the Luxembourg Fund Industry. Available at: https://www.alfi.lu/alfi/media/statistics/luxembourg/l4_promoters_en.pdf. Last visited May 3, 2022. In Ireland, according to the Irish Funds Industry Association, 21 of the top 50 promoters of Irish domiciled pooled funds are from the U.S. comprising $1.7 trillion of $2.4 trillion AUM in the top 50. Available at: https://www.irishfunds.ie/distribution/promoters. Last visited May 3, 2022.

[16] See for example, the SFDR, *supra* FN 12. See also EU proposed Corporate Sustainability Reporting Directive, 21 April 2021, which aims to improve the flow of sustainability information by bringing sustainability reporting on a par with financial reporting and extending the EU's sustainability reporting requirements to all large companies and all listed companies with the goal of promoting more consistent, comparable, and reliable sustainability-related disclosures for the benefit of financial firms, investors, and the broader public. ("CSRD")

[17] Under final rules promulgated under the SFDR, among the disclosures, market participants offering investment products in the EU that consider sustainability factors, will need to publicly provide a principal adverse sustainability impacts statement ("PAI Statement"). Among the required climate-related metrics are scope 1, 2 and 3 GHG emissions, carbon footprint, and GHG intensity of investee companies. Available at: https://www.esma.europa.eu/sites/default/files/library/jc_2021_03_joint_esas_final_report_on_rts_under_sfdr.pdf. The February 2, 2021 Final Report on draft regulatory technical standards was updated on October 22, 2021 (JC 2021 50) but the PAI Statement requirements remain as presented in the February version. See https://www.esma.europa.eu/sites/default/files/library/jc_2021_50_-_final_report_on_taxonomy-related_product_disclosure_rts.pdf.

market for debt financing. From our perspective as bondholders, we do not view the Proposed Rule as an attempt by the Commission to impose a social policy objective. We welcome the Proposed Rule, because the proposed disclosures bolster our own ESG-integrated investment process and, perhaps more importantly, if adopted, will provide information that we are increasingly obligated to disclose under securities regulations by non-U.S. jurisdictions or, as importantly, because of the informational demands of our clients, which have now become more than simply responding to currently popular *deriguer* requests from investors.[18]

The U.S. High Yield Bond Market: a major source of capital for U.S. corporations

We think it appropriate in the context of our support for the Proposed Rule and the comments contained in this letter to front some key facts and characteristics about the nature of U.S. High Yield bond market and our experience with institutional investors in this market.

The High Yield market currently comprises over $1.5 trillion in market value with over 1,000 issuers, most of which are American companies or foreign companies offering products or services in the United States.[19] This figure is simply what is now outstanding but does not fully reflect the actual amount of capital raised by U.S. companies over time when taking into consideration refinancing and new issuers. As set forth below, over a period of time, the amount of capital raised in the High Yield market is much larger than simply what is currently outstanding.

It may not be well known or appreciated by the public that bonds have become the principal source of external financing, far outpacing equity issuance for U.S. corporations.[20] The critical role of institutional bondholders in this context is worth highlighting as the Commission deliberates on what elements to adopt, modify, or drop in the Proposed Rule. Specifically, we urge the Commission to give appropriate weight and consideration to the climate-related disclosure preferences of U.S. and non-U.S. institutional bond investors. As the principal suppliers of capital to U.S. corporations, we agree with those who view bond investors as key stakeholders whose informational needs are equally important and necessary as those of equity shareholders given the trading dynamics and investment practices of the modern bond market.[21]

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[18] A recent survey of 320 institutional investors by the global accounting firm Ernst & Young found that, "A burgeoning number of institutional investors around the world are placing greater emphasis on ESG performance in their decision-making and 74% are now more likely to divest from companies with poor ESG track records." Available at: https://www.ey.com/en_gl/news/2021/11/three-quarters-of-institutional-investors-say-they-may-divest-from-companies-with-poor-environmental-track-records. Last visited June 8, 2022.

[19] See ICE High Yield H0A0 Index

[20] See Steven L. Schwarcz, Rethinking Corporate Governance For A Bondholder Financed, Systemically Risky World, William & Mary Law Review, Vol. 58:1345 at 1356-57, (2017) (arguing among other things, that corporate governance should include bondholders because bonds now dwarf equity as a source of capital financing and bond prices are increasingly tied to firm performance and noting that, "Bonds have now become the principal source of external financing for U.S. firms, dwarfing equity issuances")(internal quotations and citations omitted).

[21] Id. At 1351 (arguing that the conventional shareholder primacy model is archaic and no longer reflects reality because bonds now exceed equity shares as a source of corporate financing, and bondholders today like

It may surprise even some of the most sophisticated investors to learn that more capital is raised in the High Yield bond market alone (which is only a fraction of the total corporate nonconvertible bond market) than in the U.S. equity market. For example, during the last decade from 2012 to 2021 inclusive, $3.1 trillion in U.S. corporate bonds were issued in the High Yield bond market,[22] an amount that exceeds the $2.8 trillion raised in U.S. equity capital during that period.[23] Together with investment grade bond issuance, total bond issuance of $15.8 trillion[24] exceeded equity issuance by a factor of nearly six times during the recent decade.

The nature of the High Yield bond market warrants enhanced disclosure

The typical corporate High Yield issuer, by definition, is highly leveraged, its debt is rated below investment grade with an expected higher probability of default and is often saddled with significant impairments in its business model. Since the early days of the High Yield market in the mid-twentieth century, investors in this market have been faced with companies threatened by the risks associated with business models that lack core sustainability: companies with excessive employee post-retirement health benefits and pension obligations, waste contamination clean-up costs, long-tailed liabilities associated with faulty product manufacturing or use, fraudulent accounting due to lax corporate governance, or limited organic growth opportunities. Today, adding to this list is the risk of stranded assets as the world continues to decarbonize.

Moreover, the investor universe for High Yield bonds, which are still disparagingly referred to as "junk bonds," is a relatively smaller universe due to regulatory, bylaw or self-imposed constraints, which can result in outright prohibitions on investing in High Yield debt. With the worldwide focus on sustainability and increasing preference of investors to direct or re-direct capital to sustainable investment portfolios, High Yield issuers and their governing boards have been well advised to embrace corporate sustainability to ensure a place in line when (not if) market conditions tighten (as coincidentally they are at the time of this comment letter), and capital becomes more selective. In short, companies whose businesses depend on issuing High Yield debt can neither take for granted their continuing access to capital nor fail to address the information requirements of High Yield investors.

In a merit based regulatory regime, one might envision that, for both issuers and investors, the unique nature and heightened risk characteristics of the High Yield market might foreclose this market as a major

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shareholders "often realize their investment value not by holding onto the securities" to maturity, "but by selling them to other market investors" and thus, bondholders "view their investment decisions from a market pricing standpoint, rather than a priority-of-claim standpoint," and market pricing in turn depends on the financial condition of the issuer and its managerial decision-making processes).

[22] See SIFMA U.S. Corporate Bond Statistics as of April 2022, available at: https://www.sifma.org/resources/research/us-corporate-bonds-statistics/. Last visited May 3, 2022.

[23] See SIFMA U.S. Equities and Related Statistics as of April 2022, available at: https://www.sifma.org/resources/research/us-equity-and-related-securities-statistics/#:~:text=Total%20equity%20issuance%20%2428.9%20billion,%2C%20%2D12.1%25%20Y%2FY. Last visited May 3, 2022.

[24] See FN 22 *supra*, Issuance of investment grade and high yield bond nonconvertible bond issuance from 2012-2021 inclusive.

source of or a place to deploy capital. Yet, as we have highlighted, the High Yield market raises more capital than the U.S. equity market and has been a significant factor in funding hundreds of American corporations otherwise handicapped with below investment grade bond ratings. From our perspective, a key element underpinning the success of the U.S. corporate High Yield market has been and is, in a word, disclosure.

Because we perform our own fundamental research and credit analysis and do not treat externally issued credit ratings as dispositive in our investment decisions, we rely on our in-house expertise and credit-picking skills. Thus, having access to consistent, comprehensive, and reliable information in company filings is necessary for a boutique investment firm like ours to function at optimal capacity. Our proprietary financial models, which serve as the basis for our securities selection, are all dependent upon data from company filings or in the case of private companies, financial statements prepared substantially in conformity with Regulations S-K and S-X.

The role of private issuers in the High Yield bond market

Private companies and issuers of exempt offerings now make up a significant portion of the U.S. corporate High Yield market, and that proportion continues to grow unabated. By our estimates, private companies now comprise a third to almost half of the corporate High Yield market. The proportion is even higher when measured by bonds outstanding. As further evidence of the presence of private issuers in the High Yield market, over the past decade, 144A bonds as a proportion of the average daily trading volume has increased from 39.7% in 2011 to 71.5% and 101.3% in 2020 and 2021 respectively.[25]

By our own estimates, 144A bonds now outnumber registered bonds (in both count and face value) and now make up nearly two thirds of the High Yield bond market as reflected by the ICE BoA U.S. High Yield Index. Moreover, the market appears to view registered and unregistered 144A bonds as virtually indistinguishable as differences in price between the two have essentially disappeared, particularly when adjustments are made for various credit rating and duration.[26] The absence of a price premium for unregistered 144A bonds coupled with the modest information disclosure requirements currently governing Rule 144A has resulted in the logical choice of many companies to issue "144A-for-life" [27]

[25] FN 22, *supra*, U.S. corporate bonds average daily trading volume.

[26] See SKY Harbor Capital Management, Weekly Briefing: SKYView: The Rise of Unregistered Bonds Under Rule 144A at 3 (Feb. 17, 2020), available at: http://www.skyhcm.com/documents/weekly/SKY_Harbor_Weekly_Briefing_17Feb2020.pdf?pdf=17Feb2020.

[27] Latham & Watkins-KPMG, Financial Statement Requirements in U.S. Securities Offerings, 2022 edition, January 2022 (noting that they have seen the rise in "144-for-life" debt financings and that, "these transactions are identical to regular Rule 144A offerings, except that they do not offer bond investors any registration rights and they do not require the bond issuers to become or remain voluntary filers of Exchange Act reports. Because these offerings will not be followed by registered exchange offer prospectus that is fully compliant with S-X, some deal teams are concluding that '144A-for-life' disclosure documents can more freely dispense with non-core S-X requirements than would be the case in a Rule 144A offering with registration rights."), at 23, available at: https://www.lw.com/thoughtLeadership/non-us-financial-statements-guide. Last visited June 15, 2022.

High Yield debt, thus avoiding in perpetuity the need to register and file complete financial statement information commensurate with registered offerings.

The rise of private companies and 144A-for-life bonds in the High Yield market creates a significant informational gap, which we respectfully suggest, the Commission should take notice of and close. It has been our experience that private company issuers in the High Yield market have substantially less or no climate-related disclosure than publicly listed companies. The dearth of ESG disclosure generally and climate-related metrics specifically from issuers of exempt Rule 144A securities has compelled us to rely on and incur the additional expense of outside vendors to provide statistical estimates of the GHG emissions of our portfolios. With greater disclosure from this segment of the market, we believe we can either perform the analysis ourselves and/or benefit from significantly improved estimates and reporting from our outside vendor who at the end of day must look to the same primary source data as we would.

We urge the Commission to encourage bringing this important segment of the High Yield market under the same disclosure obligations with respect to the proposed metrics as will be required of registrants through an explicit and relatively modest modification of what constitutes reasonably current financial statements that is already a condition of issuers/sellers of exempt offerings under Rule 144A.

A standard disclosure framework benefits both investors and issuers

The Proposed Rule correctly notes in Section I -C, "there has been significant investor demand for information about how climate conditions may impact their investments," and that "demand has been increasing in recent years." Since the pandemic, there is evidence that investors are even more inclined to incorporate ESG performance in making investment strategy and decisions,[28] and it appears to us there is no reason to expect that these information demands will abate.

For our part, we can corroborate the increasing investor preference by institutional investors for socially responsible investment strategies from our own experience. In responding to the preferences of our institutional clients and investors and to bolster our in-house capabilities in evaluating the impact of ESG risk factors and GHG emissions on the creditworthiness of High Yield issuers, we believe that the standardized, comparable, and consistent disclosures in the Proposed Rule if adopted will significantly assist our credit analysts and portfolio managers in performing a robust due diligence as part of our investment decision-making. Moreover, we believe that, based on our direct engagements with High Yield issuers, particularly with corporations with fewer resources devoted to sustainability risk disclosure, smaller issuers may also welcome the Proposed Rule.[29]

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[28] See Ernst & Young, Is your ESG data unlocking long-term value?, Sixth global institutional investor survey, November 2021, (finding that since the pandemic, 90% of investors surveyed "attach greater importance to corporates' ESG performance when it comes to their investment strategy and decision-making."), available at: https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/assurance/assurance-pdfs/ey-institutional-investor-survey.pdf, last visited June 8, 2022.

[29] References throughout the Proposed Rule concerning the large percentage of companies in the S&P 500 that have issued sustainability reports or have set carbon reduction targets or have had some form of assurance over

In our engagements, High Yield issuers have expressed to us the difficulty of having to respond to investor requests for ESG and climate-related metrics not only because of the numerous requests but also the number of differing reporting frameworks. We believe the Proposed Rule by setting forth standardized guidance will be a welcome development for companies with resource constraints but desirous of satisfying disparate investor demands for ESG and climate-related disclosures. A standardized reporting regime will create a single rulebook for both investors and issuers; bolster a more robust due diligence; and ultimately enable sustainability-integrated investment processes to achieve the end purpose of enhancing value in investment portfolios and promoting best practices in corporate governance.

ESG in High Yield: a value-driven initiative dependent on reliable data

As we have written in our client commentary, an ESG-integrated investment process is not so much a *values-driven* moral or political imperative unilaterally imposed on our investors as it is a *value-driven* initiative increasingly demanded by forward-looking investors and embraced by thoughtful corporate boards and management. A *value-driven* motivation to integrate ESG risk factors in the investment process or in the management of a company's business is founded on the belief that companies with positive ESG risk factors or who have taken steps to mitigate material ESG risk factors are better positioned to avoid a significant adverse financial impact associated with an ESG event. We submit that such companies can also be expected to benefit from the transition to a sustainable, low carbon, and inclusive economy and thus are more likely to generate superior investment returns over time with lower cost of capital and concomitant financial flexibility that comes with it.

We are aware and acknowledge that the hard evidence of how and to what extent ESG-integration improves investment returns, particularly in the short term, is mixed. There is literature on both sides of that argument, and we concede that it may be difficult to attribute returns quantitatively to specific ESG factors. But we believe that a debate on that issue is misplaced and misses the mark.

First, as previously indicated, there is a large block of developed countries, specifically the 27 countries of the EU along with the UK and other non-EU jurisdictions – important jurisdictions for SKY Harbor and other similarly situated U.S. registered investment advisers – that not only believe the science and the rationally undeniable harm from climate change but have encouraged investors through disclosure requirements and other means to affirmatively re-direct capital toward sustainable investments as well as investments in environmentally sustainable economic activities.[30]

ESG metrics are not reflective of the High Yield market where we found that only about 52 out of the 500 companies in the S&P index are High Yield issuers.

[30] See SFDR Article 2 (17) defining "sustainable investment" to mean "an investment in an economic activity that contributes to an environmental objective, as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, on the production of waste, and greenhouse gas emissions, or on its impact on biodiversity and the circular economy, or an investment in an economic activity that contributes to a social objective" . . . "provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices." See also EU Regulation 2020/852

Among those required disclosures are climate and other environment-related indicators. Specifically, GHG emissions, Scope 1, 2 and 3, carbon footprint, GHG intensity of investee companies, share of investments in companies active in the fossil fuel sector, share of non-renewable energy consumption and production, and energy consumption in GWh per million of revenue of investee companies per high impact climate sector.[31]

U.S. financial institutions, investment advisers and U.S. corporations listed in these jurisdictions will need this information to comply with these requirements. It is not so much a question of whether the Commission should be imposing disclosure requirements to assist in complying with non-U.S. jurisdictional demands as it is simply a practical recognition that this kind of information is now increasingly needed and desired by investors regardless of whether the jurisdiction in which the investor resides requires it. The extent of the detailed GHG metrics demanded in the EU, which were developed over many years in consultation with multiple stakeholders including investors and companies, is simply a manifestation of what many in the financial industry believe is pertinent in evaluating an investee company's commitment to sustainability and/or the prospects of continuing as a profitable going concern over time.

This leads to a second point: perception is reality. Regardless of whether it can be proven statistically or otherwise whether ESG-integration enhances investor returns, the fact is, many investors and regulatory authorities believe this information is necessary to make fact-based investment decisions in conformity with their preferences. Moreover, assessing an investee's desirability in the short term cannot be done without considering a company's medium to long-term risk, opportunities, and prospects. Put another way, the perception of a company's purpose and long-term outlook is an important part of the investment calculus of whether to invest in that company's securities in the present.

Thirdly, although evidence of bolstered performance in ESG strategies may be mixed, there is no evidence that our ESG strategies have sacrificed performance. The performance track record of High Yield portfolios that we converted to socially responsible strategies has been consistent with earlier years before we embarked on our journey to integrate ESG risk factors into our investment decision-making. Moreover, a recent study by Goldman Sachs Credit Strategy Research corroborates our experience (the "Goldman study").[32]

The Goldman study observed strong growth in investment flows to "ESG-aware fixed income funds" over the recent years but found "evidence of systematic ESG outperformance has been elusive."[33] Nevertheless, the paper concludes that the absence of such evidence is not bad news because the research

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of the European Parliament and Council as of 18 June 2020 on the establishment of a framework to facilitate sustainable investments (the "Taxonomy Regulation").

[31] See Annex I to Regulatory Technical Standards to the SFDR approved by the European Supervisory Authorities. Available at: https://ec.europa.eu/finance/docs/level-2-measures/C_2022_1931_1_EN_annexe_acte_autonome_part1_v6.pdf.

[32] Michael Puempel, Ph.D. ESG in credit: A costless benefit to portfolios, Goldman Sachs Credit Strategy Research, February 2, 2022.

[33] Id.

also found that such ESG-aware fixed income strategies "do not underperform either," which the paper concludes "not only imply that ESG portfolios can have the added benefit of positive societal externalities, without any drag on returns, but they also continue to support the notion that ESG-investing requires a more nuanced and multi-faceted approach to be successful."[34]

Finally, from a qualitative perspective, we have propounded the notion that the High Yield market, perhaps more than any other major asset class in the U.S. corporate capital market, is especially vulnerable to ESG risks but also most likely to benefit from a systematic assessment, identification, and management of ESG risks and opportunities.

Our point of view is based on two overarching themes: (i) the nature of the corporate High Yield market itself, which we already described above; and (ii) a phenomenon we alluded to earlier that we described as an accelerated reckoning for uncompensated externalities.

Accelerated Reckoning for Uncompensated Externalities

We expect that the demand for socially responsible investment strategies will continue unabated for years to come in part driven by the phenomenon that can be described as an accelerated reckoning for uncompensated externalities. That is, we submit that the time before a company's negative externalities impact its financial condition has greatly accelerated in recent years. In the last century, it may have taken decades before a company had to face the financial or reputational reckoning for its uncompensated externalities (or its long-tailed risks), be it from pollution, environmental degradation, worker exploitation, harmful products, or unacceptable working conditions. Today, due to legal, regulatory, technological, market developments, or from activist-induced action, or public outrage, within a relatively short time span (well less than a decade and in some cases in a matter of months) companies are incurring both financial and non-financial costs as well as reputational harm for negative externalities that, in prior decades may have gone unaccounted for indefinitely. In short, chronic risks can rapidly become acute risks and acute risks can have immediate impacts on a company's consolidated financial statements, business operations, or value chains.

Among the most pressing and complex externality facing corporations today is due to GHG emissions.[35] In this respect, the global fossil fuel producers come to mind as an example how quickly uncompensated externalities (GHG emissions) have moved to impact a company's financial condition and reputation. The impact on the coal, energy, automotive, transportation, and utility industries are yet further examples of the same phenomenon.

This accelerated reckoning for uncompensated externalities, however, is not limited to these industries alone, especially if externalities are viewed broadly and holistically. Whether from the influence of social media and an increasingly sensitized public or the global recognition by governments to mitigate the

[34] Id.
[35] See Thomas Helbring, Externalities: Prices Do Not Capture All Costs, International Monetary Fund publication, February 24, 2020, available at: https://www.imf.org/external/pubs/ft/fandd/basics/external.htm, last visited May 2, 2022 (explaining the differences between private returns or costs and the costs or returns to society as a whole).

rationally undeniable harm from climate change, we believe the time lag before uncompensated externalities become internal diseconomies of scale has rapidly shortened. Left unrecognized or unmanaged, the accelerated reckoning for uncompensated externalities can impact in a surprisingly rapid manner the financial condition and creditworthiness of companies not only in the High Yield market but in the investment grade market as well (giving rise to so-called "Fallen Angels") as investment grade issuers see their bonds re-rated below investment grade.

We conduct our due diligence with the notion that virtually every major commercial and industrial sector is vulnerable to some extent, directly or indirectly, of being impacted by ESG risk factors and/or GHG emissions somewhere along their value chain. From our perspective, the compressed time lag amplifies the importance of getting consistent, comparable, and reliable information from High Yield (as well as investment grade) companies in order to better understand not only the current risks and opportunities for bond issuers but also to better assess the risk and potential timing of GHG or other externalities metastasizing into internal diseconomies of scale with negative impact on financial performance and creditworthiness – bedrock concerns for High Yield investment portfolios.

Methodology of Proprietary Value Rubric

Rather than rely on outside ESG rating companies whose focus on larger public companies and the concerns of equity investors (e.g., proxy voting and related policies), SKY Harbor has designed a proprietary scoring system (the "Value Rubric") to monitor and manage ESG factors that we believe are relevant and reflective of the risks and opportunities associated with a just transition to a low carbon economy and that are more unique to High Yield issuers.

The Value Rubric seeks to capture in a quantifiable and deliberative fashion the Sustainability Factors that we believe are most relevant and publicly accessible in identifying High Yield companies that are best positioned to benefit from the transition to a sustainable and inclusive economy — or not. We believe our Value Rubric provides consistent and comparable coverage across nearly all but the smallest U.S. High Yield corporate issuers; has the ability to reasonably rate private issuers; allows for fully transparent updates and customization in the design of the scoring system through incremental improvements and added risk factors relevant to the state of the High Yield issuer universe. The Value Rubric also avoids comparing high yield companies to a cohort comprising the largest multinational corporates such as those in the S&P 500, which is not a viable cohort for comparison because the proportion of High Yield issuers in the S&P 500 Index is less than 12%.[36]

The Value Rubric generates a final score based on key performance indicators ("KPIs") in four categories: environmental, social, governance and human rights. Each category is scored and then combined into a single score. Clients and portfolios with socially responsible investment objectives must meet a minimum score on the Value Rubric to be included in those portfolios. Within the environmental category, Scope 1 and scope 2 GHG emissions are captured to the extent available and if not disclosed, these KPIs are based on estimates by an outside vendor. To the extent available, Scope 3 emissions would

[36] See FN 29 *supra*.

be a welcome addition, although currently this data is not generally readily available. Qualitative and quantitative information styled along the lines of the TCFD are also credited with positive scores. Judgments on a High Yield issuer's transition risk and positive or negative environmental impact rounds out the Environmental score in the Value Rubric.

The Value Rubric has been an important tool in our developing journey as a sustainability-focused High Yield bond manager. It has served to formalize, along with our engagement practices and negative exclusions, our ESG-integrated investment process. We, however, believe the Value Rubric could play an even more important function in assessing ESG-related risk and opportunities in the High Yield space but for the lack of consistent, comparable and readily available disclosure including but not limited to the climate-related metrics in the Proposed Rule. Adding to the limitations is, as we previously pointed out, the significant proportion of private companies benefiting from privately placed High Yield bonds under the safe harbor of Rule 144A. These issuers appear to have successfully avoided the more fulsome transparency and disclosure obligations of public companies.

To the extent the proposed climate-related metrics are adopted we would look to bolster the Value Rubric environmental KPIs commensurate with the quality and quantity of disclosure.

Part II: Comments selected Questions of the Proposed Rule

Comments to questions are numbered corresponding to the Section and numbering format in the Proposed Rule.

Comments related to Section IIA: Overview of the Climate-Related Disclosure Framework

1. Should we add a new subpart to Regulation S-K and a new article to Regulation S-X that would require a registrant to disclose certain climate-related information, as proposed? Would including the climate-related disclosure in Regulation S-K and Regulation S-X facilitate the presentation of climate information as part of a registrant's regular business reporting? Should we instead place the climate-related disclosure requirements in a new regulation or report?

Comment: Yes. We support adding a new subpart to Regulations S-K and a new article to Regulation S-X because it would make available climate-related data on a consistent, comparable, and readily available basis. We believe this information would bolster current filings. Because of the lack of such data currently we have no choice but to retain outside vendors to estimate by proprietary methods GHG emissions. We see no particular need or benefit in placing climate-related disclosure requirements in a new regulation or report because we view climate-related information an integral part of a company's business risk and opportunities.

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?

Comment: Immediately, we would use the data to enhance the comparability of GHG emissions among and between High Yield issuers, which will help identify through positive and negative outliers additional avenues of inquiry and research. The data would also help us to gauge the accuracy of estimates performed by the outside vendor's estimate of the GHG impact on the portfolios that we manage. Moreover, we expect the added disclosures will enable outside vendors to better estimate portfolio GHG emissions since currently, due to the lack of disclosure, our vendor is not able to cover the entire universe of the High Yield issuers perhaps leaving out as much as a quarter of the High Yield universe unaccounted for. Over time we expect to use the newly available data to enhance our proprietary scoring system by incorporating the metrics into KPIs that will bolster the environmental component of our proprietary scoring system. Finally, this data will be extremely helpful in meeting our GHG emissions reporting under the EU SFDR's Principal Adverse Statement requirement.

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?

Comment: We are signatory to the TCFD and fully embrace the four broad pillars of the TCFD reporting framework, including the 11 sub-components, all of which we believe are substantially incorporated within the Proposed Rule. We agree that alignment with the TCFD would encourage consistent, comparable, and reliable information for investors like SKY Harbor. Our experience during engagements with investee companies suggests that many companies in the High Yield space (many of which are medium-size corporations with limited resources) would welcome a single, comprehensible, and widely accepted universal reporting framework in which to respond to a disparate audience of stakeholders demanding ESG transparency.

4. Do our current reporting requirements yield adequate and sufficient information regarding climate-related risks to allow investors to make informed decisions? In lieu of, or in addition to the proposed amendments, should we provide updated guidance on how our existing rules may elicit better disclosure about climate-related risks?

Comment: While there may be a need to allow the passage of time and experience to determine whether the Proposed Rule is sufficient to make informed decisions regarding the impact of GHG emissions on the investment decision, the current Proposed Rule by adopting most if not all the TCFD recommended disclosures *ex ante* appears adequate for informed decision-making. We have participated in industry conferences, and our impression is that further guidance from the Staff of the Commission (or the Commissioners) would be welcomed by both registrants and investors, particularly because of the nature of such metrics as Scope 3 emissions, which are inherently uncertain and subject to significant estimation, model, and technical error.

5. Should we require a registrant to present the climate-related disclosure in an appropriately captioned, separate part of the registration statement or annual report, as proposed? Should this disclosure instead be presented as part of the registrant's MD&A?

Comment: In our experience, tracking down ESG-related information can be at times more like an Easter egg hunt. Information is scattered on websites (and in different links of the same website), proxy statements, registration statements, Corporate Sustainability Reports (often separate from and separately posted from SEC-filing materials), or third party sources. The climate-related information in the Proposed Rule is complex, and we believe there may be a risk of complicating the MD&A section with too much information, particularly if a registrant's materiality assessment of climate risks and opportunities are not commensurate with other risk factors, business trends, or operations. As we have previously stated, we do not view ESG-integration as predominating over conventional financial and credit analysis, and in our opinion it might be more efficient and effective that the climate-related data in the Proposed Rule be segregated in an appropriately captioned, separate part of the registration statement or annual report for ready and convenient access. In addition, we believe such a separate section would better suit situations where a different individual may be reviewing the ESG-related information for populating our proprietary scoring system than the individual performing the credit analysis. Similarly, because we include the entire universe of High Yield issuers in our Value Rubric, our analysts will be reviewing hundreds of High Yield issuers specifically for ESG and/or climate-related data even though for whatever reason we are not currently considering the subject company for an impending investment. In these situations, being able to turn to an appropriately captioned, separate section of the registration statement would enhance efficiency and economy.

7. Should we permit a registrant to provide certain of the proposed climate-related disclosures in Commission filings other than the annual report or registration statement? For example, should we permit a registrant to provide information about board and management oversight of climate-related risks in its proxy statement?

Comment: As an exclusive fixed income investor we do not have proxy voting opportunities. Although we of course can access the proxy statement on EDGAR, the proxy statement is not designed to address the needs of fixed income investors. Echoing the comments we made in Part I of this letter, the significance of the High Yield investor in our opinion merits recognition by the Commission, and as such we urge the Commission to limit the proposed climate-related disclosures to the annual report or registration statement. Moreover, we favor this approach over the proxy statement because whether or not, as we advocate in this letter, the Commission decides to encourage private companies (who obviously do not issue proxy statements) to disclose this information as a condition of benefiting from the Rule 144A safe harbor, there will be a greater likelihood that private companies will follow suit in the financial statements they make available to Rule 144A High Yield investors. Even if the Commission declines to adopt our recommendation concerning private companies availing themselves of the Rule 144A safe harbor, we believe most companies, particularly repeat issuers dependent on the High Yield market for capital generally issue financial statements and Annual Reports (including Rule 144A offering memoranda) modeled on SEC guidelines and over a relatively short period of time will, we believe, voluntarily disclose similar data as mandated of registrants to comply with what will surely be viewed as industry standard if the Proposed Rule is adopted. In short, for the above reasons, permitting the climate-related data and board oversight information to be disclosed in proxy statements would not be helpful to fixed income investors.

Comments related to Section II B: Disclosure of Climate-Related Risks

8. Should we require a registrant to disclose any climate-related risks that are reasonably likely to have a material impact on the registrant, including on its business or consolidated financial statements, which may manifest over the short, medium, and long term, as proposed? If so, should we specify a particular time period, or minimum or maximum range of years, for "short," "medium," and "long term?"

Comment: As we previously discussed in Part I, SKY Harbor looks at ESG-related risks because long-tailed risk in this space can quickly become financially impactful. While this question is different than the notion of an accelerated reckoning for uncompensated externalities in the sense that climate-related risk may not necessarily be an externality based on a company's conduct or products, nevertheless, we believe it is an important disclosure topic. At a minimum, the articulation of these risks serves as an indication of the quality of a company's governance and management. To read how a company views these risks (and well as risks from externalities that be associated with a company's conduct or products) over the short, medium and long term would, in our judgment, give investors insight regarding the quality, competence, and credibility of a company's board and its senior management. One of the tenets of our firm's ESG-integration is that "no one size fits all." In that regard, we would favor having each company define for themselves what they view as short, medium and long term risks, rather than setting a prescriptive time period or a minimum or maximum range.

9. Should we define "climate-related risks" to mean 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 proposed? Should we define climate-related risks to include both physical and transition risks, as proposed? Should we define physical risks to include both acute and chronic risks and define each of those risks, as proposed? Should we define transition risks, as proposed?

Comment: We support the definition of "climate-related risks" as proposed because we believe the definition aligns with our motivation for integrating ESG risks into our financial analysis: to avoid being blindsided by an unconsidered ESG-related risk. In this case the disclosure of climate-related risks on a company's financial statements, business operations, or value chains is exactly what we believe is necessary to ensure that such risks do not go unconsidered for lack of disclosure. Transition risk is equally important, and we support its inclusion as a disclosable risk, particularly with respect to possible changes in law, regulation, or international business practices (e.g., cross border carbon tax) could have material adverse impact (or perhaps even opportunities) on a company's business. We strive to ensure that these risks do not go unconsidered in our ESG-integrated investment process and believe that evidence that the board and management of a company has affirmatively considered these risks is best manifested in how a registrant addresses these specific risks in their filings with the Commission.

14. If a material risk concerns the location of assets in regions of high or extremely high water stress, should we require a registrant to quantify the assets (e.g., book value and as a percentage of total assets) in those regions in addition to their location, as proposed? Should we also require such a registrant to disclose the percentage of its total water usage from water withdrawn in high or extremely high water stressed regions, as proposed?

Comment: We believe to the extent a company determines that risks to such assets, if they should occur, would have a material impact on a company's financial condition or cash flow, then this information should be disclosed in a robust fashion including a good faith quantification of the assets and the general vicinity of the sites. Given GAAP, however, we are not sure how helpful book value would be in assessing the possible impact on a company's enterprise value. Perhaps the percentage of total assets affected coupled with an estimate of revenue derived from those assets might be better metrics.

We also very much favor disclosure of the percentage of its total water usage from water withdrawn from high or extremely high water stressed regions, as proposed. The use of public water in a company's operation adds to the stress in certain drought stricken regions impacted by climate change. These conditions, because of climate change, may no longer be short-lived phenomena. This is a classic version of our notion of a possible accelerated reckoning for uncompensated externalities to occur. How long would a local community act to shut down a company's ability to withdraw more water or impose a materially significant cost in the form of usage fees or taxes? These are obvious questions that would need to be asked and answered in assessing a company's financial condition and cash flow in such circumstances. Of course, water usage is but only one aspect of the general impact of company's impact on Biodiversity, which for now may be beyond the scope of the Proposed Rule and these comments.

Comments related to Section II C: Disclosure Regarding Climate-Related Impacts on Strategy, Business Model, and Outlook

19. Should we require a registrant to describe the actual and potential impacts of its material climate-related risks on its strategy, business model, and outlook, as proposed? Should we require a registrant to disclose impacts from climate-related risks on, or any resulting significant changes made to, its business operations, including the types and locations of its operations, as proposed?

Comment: We support the disclosure as proposed under Item 1502(b), which is aligned with the Recommended Disclosure (b) under the TCFD's Strategy pillar. The rationale for the proposed disclosure is clearly articulated in Section II C (1) of the Proposed Rule. Moreover, as noted in FN 336 of the Proposed Rule, the TCFD provides excellent examples of the kinds of actual or potential impacts in Section A.4 of the TCFD publication Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures, updated in October 2021. Also in that publication Table A1.1 on p. 75 provides a roadmap for completing Item 1502(b) with examples of the type of climate-related risks and the potential financial impacts corresponding to policy/legal, technology, market, and reputation risks. The suggestions and variety of examples in the TCFD table A1.1 suggests to us that registrants will have a significant degree of flexibility and choices in providing the disclosures that would satisfy the proposed Item 1502(b) requirement that would in turn be useful to SKY Harbor in our investment and credit analysis. For example, asking registrants to explain how climate related risks could impact financial conditions through increased pricing of GHG emissions, mandates on and the regulation of existing products and services, exposure to litigation, costs to transition to lower emissions technology, changing customer behavior, increased cost of raw materials, shifts in consumer preferences, and similar factors do not appear to us beyond the core competencies of any reasonably managed company that intends to tap the High Yield market for funding.

24. If a registrant has used carbon offsets or RECs, 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?

Comment: Yes, we agree that registrants should disclose the role that RECs play in the overall strategy for all the reasons expressed in the Section II C (2) in the Proposed Rule. In addition, from our perspective, understanding the role RECs play in combination with Science Based Targets (or not) gives us important insight into management's thinking and approach. We also believe it important to have this information to make judgments as to a registrant's good faith efforts in reaching stated climate-related goals and targets and equally important to ferret out companies that may view RECs as a convenient cost of doing business while not substantively moving toward stated decarbonization goals; conduct which would be a factor in evaluating the overall quality and integrity of a company's board and management as well as a consideration in evaluating possible litigation and/or regulatory enforcement risk.

26. Should we require registrants to disclose information about an internal carbon price if they maintain one, as proposed? If so, should we require that the registrant disclose:

· The price in units of the registrant's reporting currency per metric ton of CO_2e;

· The total price;

- The boundaries for measurement of overall CO2e on which the total price is based if different from the GHG emission organizational boundary required pursuant to 17 CFR 210.14-03(d)(4); and

- The rationale for selecting the internal or shadow carbon price applied, as proposed? Should we also require registrants to describe the methodology used to calculate its internal carbon price?

Comment: We believe carbon pricing is an important tool and should be encouraged not only at the corporate level but at the national level as well, such as efforts by President Biden under Executive Order 13990 of January 20, 2021, in establishing the Interagency Working Group on the Social Cost of Greenhouse Gases.[37] However it is one thing for a federal agency under presidential order to disclose the cost of carbon/GHG gases, but quite another for a private entity not in the business of creating such estimates to do so. We, therefore, admit to having ambivalent thoughts on whether this level of disclosure should be required because we believe it might in fact backfire and operate as a chilling effect for registrants to establish best practices. We surmise that most registrants will be reluctant to disclose this information and thus decide to eschew internal carbon pricing given the complexity and likely wide variety of pricing alternatives available. Hence, we would not look askance at a registrant's reluctance to publicly disclose such information.

We believe companies should, as best practice, attempt to estimate the cost of carbon (and GHG) on their operations, but until or unless some kind of nationally or industry accepted price is achieved, we wonder to that end would such disclosure serve? Some might find it academically interesting or compare it to other estimates but then again to what end? We offer our perspective that it is sufficient at this juncture not to let perfection be the enemy of the good and allow companies during these initial years of climate-related disclosure to have a reasonable degree of confidentiality in their internal methods as they resolve in good faith to satisfy the many otherwise fulsome (and decision-useful) disclosures in the Proposed Rule.

30. Should we require a registrant to disclose analytical tools, such as scenario analysis, that it uses to assess the impact of climate-related risks on its business and consolidated financial statements, and to support the resilience of its strategy and business model, as proposed?

Comment: In the similar spirit to our Comment to Queston No. 26, we believe this disclosure can be helpful, but we would probably find a relatively high level narrative disclosure to be equally satisfactory. It would be most useful for our internal evaluation to know how a registrant explains the resilience of its strategy and business model as proposed and generally the methods or the basis on which the registrant has drawn its conclusions. The details, tools and calculations used to arrive at

[37] See also Social Cost of Greenhouse Gases: Issues for Congress, Congressional Research Service, June 7, 2021, (explaining that the cost of GHG "are calculated using models that translate changes in emissions into economic impacts through a multistep process," and as "with any scientific or economic analysis, there are limitations and uncertainties associated with the calculation of [these] estimates."), available at: https://sgp.fas.org/crs/misc/IF11844.pdf, last visited June 8, 2022.

those conclusions are not, from our perspective, as critical since we would find it more useful for our purposes to benefit from a coherent narrative in plain English rather than highly detailed explanations of analytical tools, the assessment of which would likely be beyond our core competencies.

Comments related to Section II D: Governance Disclosures

34. Should we require a registrant to describe, as applicable, the board's oversight of climate-related risks, as proposed? Should the required disclosure include whether any board member has expertise in climate-related risks and, if so, a description of the nature of the expertise, as proposed? Should we also require a registrant to identify the board members or board committee responsible for the oversight of climate-related risks, as proposed? Do our current rules, which require a registrant to provide the business experience of its board members, elicit adequate disclosure about a board member's or executive officer's expertise relevant to the oversight of climate-related risks?

Comment: We agree that a registrant should describe as applicable, the board's oversight of climate-related risks as proposed for the reasons cited in Section II D of the Propose Rule, which in turn are based on specific recommendations of the TCFD. We agree also with the requirement that a registrant should identify the board members or board committee responsible for the oversight of climate-related risks as proposed. This qualitative information is one of the items we expressly attempt to capture in our Value Rubric because we believe it is reflective of the board's prioritization of ESG and how broadly the board takes its *Caremark* oversight responsibilities.

With respect to requiring disclosure of climate-related expertise, we have ambivalent thoughts. First, how would climate-related expertise be defined? Does it require academic credentials or appropriate government or NGO experience and if so how many years and what aspect of climate-related experience constitutes "expert"? Would a human rights activist or a biochemist be unqualified to oversee climate-related disclosure? We think it may be too narrow to require public disclosure of what a company purports to qualify as a climate-related expert. Rather we think it more practical to require registrants to explain why the chosen director has been tasked with oversight of climate-related disclosure without the need to label a director as a "climate-related expert." We believe we have the core competency, like other institutional investors, to evaluate for ourselves if the explanation is reasonable or requires further engagement or motivation to express our reservations to management. At this early stage — when most companies in the High Yield sector are just beginning their sustainability journey — we do not believe there is sufficient time and experience to define what constitutes a climate-related expert, and if such a definition exists, we believe the number of qualified individuals would not be enough to meet the demand, thus placing an undue burden on registrants, which in our opinion in the first several years, if the Proposed Rules are adopted, would not likely result in any materially different quality of disclosure.

36. Should we require a registrant to disclose whether and how the board or board committee considers climate-related risks as part of its business strategy, risk management, and financial oversight, as proposed? Would the proposed disclosure raise competitive harm concerns? If

so, how could we address those concerns while requiring additional information for investors about how a registrant's board oversees climate-related risks?

Comment: Yes, we support the requirement to disclose whether and how the board or board committee considers climate-related risks as part of its business strategy, risk management, and financial oversight as proposed for all the reasons cited therein. We do not believe the level of disclosure as contemplated by the TCFD would raise competitive harm issues, but concerns about perceived or real competitive harm is one reason why we have advocated that a degree of flexibility and confidentiality be afforded to registrants. As expressed in our comments to Questions 26 and 30, we believe over-inclusive disclosure could have a chilling effect as well as the potential for competitive harm issues (or at least give registrants a handy pretext for objecting).

Comments related to Section II E: Risk Management Disclosure

45. Should we require a registrant to disclose whether and how the processes described in response to proposed 17 CFR 229.1503(a) are integrated into the registrant's overall risk management system or processes, as proposed? Should we specify any particular aspect of this arrangement that a registrant should disclose, such as any interaction between, and corresponding roles of, the board or any management committee responsible for assessing climate-related risks, if there is a separate and distinct committee of the board or management, and the registrant's committee in charge, generally, of risk assessment and management?

Comment: Yes, we agree that disclosure of the processes describe in the proposal for 1503(a) should be required, and we utilize that information in our evaluation of the sustainability of a company's management and business model. Describing the interaction, roles and responsibilities among various bodies or executives within a corporation in collecting, analyzing, strategizing and managing climate-related and other ESG risks provides valuable insight what would enhance our proprietary scoring system and help to target our engagements more effectively. We would expect to incorporate this information into an overall assessment of a corporation's enterprise risk management.

46. If a registrant has adopted a transition plan, should we require the registrant to describe the plan, including the relevant metrics and targets used to identify and manage physical and transition risks, as proposed? Would this proposed disclosure requirement raise any competitive harm concerns and, if so, how can we mitigate such concerns? Would any of the proposed disclosure requirements for a registrant's transition plan act as a disincentive to the adoption of such a plan by the registrant?

Comment: We agree that if a registrant has disclosed that it has adopted a transition plan, then the registrant should be required to describe the plan, including the relevant metrics and targets used to identify and manage physical and transition risks. We think a high level but comprehensive narrative description would suffice and be helpful to understand how a registrant views its transition risks. However, registrants that have not adopted transition plans should also be required to disclose the absence of such planning and explain why the registrant has chosen not to perform transition planning. Without a "comply or explain" approach, it might disincentivize registrants from adopting a transition plan for which they would be required to disclose while registrants who do not adopt transition plans have no obligation to disclose anything. To mitigate competitive harm concerns, we urge, as we have expressed in our other comments, the Commission to calibrate the required disclosures in a manner that is not overly prescriptive but flexible enough to permit registrants a degree of leeway and confidentiality with respect to the details of the analytical tools and methods on which transition plans are based, some or all of such tools and methodologies may be legitimately deemed as proprietary.

Comments related to Section II F: Financial Statement Metrics

52. Should we require a registrant to provide contextual information, including a description of significant inputs and assumptions used, and if applicable, policy decisions made by the registrant to calculate the specified metrics, as proposed? Should we revise the proposed requirement to provide contextual information to require specific information instead? We provide some examples of contextual information disclosure in Sections II.F.2 and II.F.3 below. Would providing additional examples or guidance assist registrants in preparing this disclosure?

Comment: We agree that requiring a registrant to provide the contextual information, including a description of significant inputs and assumption used, and if applicable, policy decisions made by the registrant to calculate the specified metrics would be helpful information that SKY Harbor would likely use in our evaluation of a registrant's High Yield securities. We concur with the Commission's reasoning in Section II.F.2 that the proposed metrics would provide us "with additional insight into the nature of a registrant's business, the implementation of the registrant's targets and goals, and material trends in climate-related impacts." This is precisely the kind of information that we believe will help us avoid being blindsided by a climate-related impacts on a registrant's financial condition.

We also concur with the Commission's reasoning in Section II.F.2 that climate-related risks may have significant impacts not only on individual registrants but also such "climate-related events and transition activities may be correlated across different, similarly situated regions." This is precisely why we also track and follow trends of certain bellwether companies in the investment grade sector even if we do not expect to invest in those securities for High Yield portfolios. We believe climate-related risks have the potential for a high correlation not only across regions but across sectors and industries, which in turn have implications for concentration of risk in High Yield portfolios. The underlying reasoning for following investment-grade bellwether companies is that climate-related impacts do not discriminate based on a registrant's bond rating. Hence we fully agree with the Commission's reasoning that, disaggregated and separate disclosure of climate-related risks would help investors — like SKY Harbor — to evaluate portfolio risk more effectively.

From our perspective, the contextual information as proposed appears sufficient and within our core competencies to evaluate.

With respect to examples or guidance, the Commission might also consider examples of climate-related impacts beyond direct weather events and include other impacts such as impacts on ecosystems and biodiversity issues,[38] which clearly are also subject to climate-related impacts, and we expect such impacts will become a focus of increased attention in the near future.

60. Would the impact from climate-related events and transition activities yield decision-useful information for investors? Would the climate-related events (including the examples provided) and transition activities result in impacts that are easier to quantify or disaggregate than climate-related risks more generally? Would a registrant be able to quantify and provide the proposed disclosure when the impact may be the result of a mixture of factors (e.g., a factory shutdown due to an employee strike that occurs simultaneously with a severe weather event)? If there are situations where disaggregation would not be practicable, should we require a registrant to disclose that it was unable to make the required determination and why, or to make a reasonable estimate and provide disclosure about the assumptions and information that resulted in the estimate?

Comment: We believe that disclosure of the impact from climate-related events and transition activities would indeed provide us with decision-useful information. We would avail ourselves to the additional detail and metrics to further assess not only the potential impact of climate on a registrant's business, strategy and financial condition but also on the board's and management's prioritization or lack of it with respect to these issues. The additional information would allow us to enhance our proprietary scoring system. We believe this in turn will result in improved risk assessment and pricing of High Yield securities.

Equally important to us with respect to our management of an EU mutual fund, the availability of financial statement metrics would also assist SKY Harbor with respect to disclosure requirements in the EU, which is a significant portion of our AUM. The EU's SFDR[39] and Taxonomy Regulation[40] will soon require financial participants (e.g., investment managers and investment funds), to the extent a fund invests in an economic activity that contributes to an environmental objective (as that term is defined in the SFDR), such investments must show what proportion of the fund's investee companies' derive from "green activities."[41] Those investments must disclose the degree of dedicated resources to such activities in the form of a percentage of total revenues or capital expenditures or operational expenses. Currently, we are not aware that such information is readily available for

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[38] See Nature Risk Rising: Why the Crisis Engulfing Nature Matters for Business and the Economy, World Economic Forum in collaboration with PWC, January 2020, (research estimating that "$44 trillion of economic value generation — more than half the world's GDP — is moderately or highly dependent on nature and its services, and therefore exposed to risks from nature loss."), at p.13, available at: https://www3.weforum.org/docs/WEF_New_Nature_Economy_Report_2020.pdf, last visited: June 9, 2022.
[39] *Supra* FN 12
[40] EU Regulation 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investments, and amending [the SFDR].
[41] *Supra* FN 17 referencing Final Report on draft Regulatory Technical Standards, JC 2021 50. See Annexes 1 through 4 of JC 2021 50 for examples of the mandated disclosure template.

companies in the High Yield universe, and hence we have elected not to offer such products in our European socially responsible investment funds. The proposed disclosure metrics we believe would be helpful in satisfying such disclosures should we elect to either create a new U.S. corporate High Yield fund with a focus on an environmental objective or, as permitted under EU rules, designate a certain minimum proportion to such investments in the existing EU mutual fund that we currently manage. The ability to meet EU requirements with respect to investments with an environmental objective with a portfolio comprised in whole or in part by in U.S. High Yield issuers would, we believe, enhance our ability to attract additional European capital into the U.S. corporate High Yield asset class.

We can envision situations where a registrant is unable to quantify and provide the proposed disclosure when the impact may be the result of a mixture of factors. In those instances, assuming the event and its financial impact met the 1% threshold or was otherwise material, we would, nevertheless, expect a narrative explanation as to the circumstances, an estimate of the financial impact (regardless of the ability to attribute it to a singular cause), and an explanation as to why it was not reasonably possible to quantify or disaggregate the information. We are confident that, given a coherent explanation, our ability to evaluate this information with respect to a High Yield registrant's overall financial condition and creditworthiness is well within our core competencies.

81. Should we require disclosure of financial estimates and assumptions impacted by the climate-related events and transition activities (including disclosed targets), as proposed? How would investors use this information?

Comment: Yes, we support requiring the disclosure of financial estimates and assumptions impacted by the climate-related events and transition activities (including disclosed targets) as proposed. This information would be used by us in whole or in part to:

- Bolster our assessment of the sustainability of a registrant's business model, which in turn will influence our view of the likelihood of continued financial flexibility to access the High Yield market for its capital needs
- Analyze whether the climate-related event is a recurring or non-recurring risk, and whether the transition activities are appropriately calibrated to this determination
- Evaluate the overall quality and competency of a registrant's board oversight and management
- Provide additional factor input to upgrade our proprietary sustainability scoring system
- Compare the registrant's disclosure to peers in the same industry or sector, which may reveal insight as to gaps, inconsistencies or conformity (including the ability to ferret out green boilerplate)
- Evaluate the reasonableness of disclosed financial estimates and assumptions on a standalone basis as well as in comparison to peer, similarly impacted, or bellwether companies
- Uncover emerging trends affecting the registrant or other companies similarly situated with respect to the climate-related event

- Differences in transition strategies including the choice of disclosed targets and the progress achieved in reaching those goals would be used to assess relative value, leading to what we would expect a more accurate pricing of risk, which of course if important in all asset classes but especially in High Yield given the asymmetric nature of risk and return in this asset class (i.e., potential loss of entire principal and unlike equities a pre-ordained ceiling on total maximum return)

From our perspective, the ability to perform these functions is dependent on the proposed disclosures.

Comments related to Section II G: GHG Emissions Methodology and Related Instructions

93. How would investors use GHG emissions disclosures to inform their investment and voting decisions? How would such disclosures provide insight into a registrant's financial condition, changes in financial condition, and results of operations? How would such disclosures help investors evaluate an issuer's climate risk-related exposure? Would such disclosures enable investors to better assess physical risks associated with climate-related events, transition risks, or both types of risks?

Comment: GHG emissions will inform our engagements with High Yield registrants and also enable us to more accurately price risk in this asset space. Without repeating the rationale set forth in Section IIG (most if not all of which are in alignment with our own practices) we believe quantifiable data is a key starting point in understanding registrants' transition risks, particularly as it relates to legal and regulatory developments. In addition, the GHG emissions data would inform our proprietary rating system and further our ability to rank High Yield issuers individually but equally important to better evaluate the exposure of the total portfolio. Finally, as previously mentioned, we are subject to EU disclosure regulations, which require an estimate of the portfolio's GHG exposure. Currently because of the widespread lack of disclosure among High Yield issuers we must rely on outside vendors to make these estimates. An understanding of a company's GHG emissions in comparison to its peer group or bellwether companies will provide insight as to that company's exposure to physical and transition risk on a relative basis, a valuable insight for a more accurate pricing of risk. Relative risk analysis is an essential aspect of our credit analysis of High Yield issuers. Particularly in the High Yield space where companies are already handicapped with below investment grade bond ratings, the ability to tap the High Yield market for future financing is a function of a company's overall and relative risk; exposure to climate-related physical and transition risks are a part of that overall evaluation.

98. Should we require a registrant to disclose its Scope 3 emissions for the fiscal year if material, as proposed? Should we instead require the disclosure of Scope 3 emissions for all registrants, regardless of materiality? Should we use a quantitative threshold, such as a percentage of total GHG emissions (e.g., 25%, 40%, 50%) to require the disclosure of Scope 3 emissions? If so, is there any data supporting the use of a particular percentage threshold? Should we require registrants in particular industries, for which Scope 3 emissions are a high percentage of total GHG emissions, to disclose Scope 3 emissions?

Comment: We believe Scope 3 emissions should be disclosed on the same basis as Scope 1 and 2 regardless of materiality. As a signatory to NZAM, we have committed to track the total GHG emissions of our High Yield portfolios. Being subject to EU disclosure regulations by virtue of our management of a European mutual fund (comprised predominantly of U.S. corporate High Yield debt), we are also required to disclose Scope 1, 2, and 3 GHG emissions. We concede that there are uncertainties and complexities in calculating Scope 3 emissions but leaving it out on the basis of materiality seems counterproductive. We submit that a company cannot credibly claim that its Scope 3 GHG emissions are not material without having made an estimate of the magnitude of its Scope 3 emissions in the first place. By the same reasoning, we would not favor the approach based on the abovementioned thresholds. If a company has the resources to make a reasonable claim that its Scope 3 emissions do not reach whatever reporting threshold is adopted, it is only logical that the company has some estimate of its Scope 3 emissions, in which case, query why for the benefit of investors who need this information those estimates cannot be disclosed.

A significant part of a company's Scope 3 upstream emissions are from a company's supply chain. The Scope 1 and Scope 2 emissions of a company's supplier are a company's Scope 3 emissions. Hence, a company may request that their suppliers provide them with that data, which would help in alleviating some of the calculation uncertainties with Scope 3 emissions. While any single company may not have the necessary clout to demand such information from some of their suppliers, over time as other customers, some with more significant negotiating power, demand this information, suppliers we believe will have no choice but to make the data available to all their downstream customers who request it. Similarly, a company's distributors' Scope 1 and Scope 2 emissions are a company's downstream Scope 3 emissions. The notion is not so dissimilar from the Value Added Tax commonly in place in all OECD countries except the United States. In short we believe that requiring all registrants to report Scope 3 emissions is preferable to limiting such reporting on a materiality standard or only to companies/industries with known high Scope 3 emissions. The latter point assumes that companies today with high Scope 3 emissions will continue to have high emissions. What happens if those Scope 3 emissions decrease over time? Will those companies no longer be required to report Scope 3 emissions? We also suggest that even with the purported difficulties and complexities of calculating Scope 3 emissions, the trend of those emission over time would be valuable information and much more meaningful if everyone had to report Scope 3 emissions. Finally, from a policy point of view (for the greater good of society), we believe solutions for more accurate, reliable, and consistent reporting of Scope 3 emissions will be more efficiently and effectively achieved when everyone is working on a solution rather than just companies that must disclose Scope 3 emissions as proposed.

99. Should we require a registrant that has made a GHG emissions reduction commitment that includes Scope 3 emissions to disclose its Scope 3 emissions, as proposed? Should we instead require registrants that have made any GHG emissions reduction commitments, even if those commitments do not extend to Scope 3, to disclose their Scope 3 emissions? Should we only require Scope 3 emissions disclosure if a registrant has made a GHG emissions reduction commitment that includes Scope 3 emissions?

Comment: We believe it is not unreasonable to require a registrant that has made a GHG emission reduction commitment to include Scope 3 emissions but the question becomes moot if, as we indicate in our comment to Question 98, *supra*, all registrants should be required to report Scope 3 emissions. Without a universal Scope 3 emission disclosure requirement for all registrants similar to the requirement to disclose Scope 1 and Scope 2 emissions, the Scope 3 requirement as proposed, we believe, acts as a disincentive for companies to make GHG emission reduction commitments to the detriment of society.

102. Should we 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, as proposed? Should we only require the disclosure of the total amount of Scope 3 emissions for the fiscal year? Should we require the separate disclosure of Scope 3 emissions only for certain categories of emissions and, if so, for which categories?

Comment: From our perspective, an understanding of a registrant's Scope 3 emissions disaggregated for each significant category of upstream and downstream emissions as well as the total amount of Scope 3 emissions for the fiscal year would provide valuable insight into a registrant's business model and its physical and transition risks. Analysis of this kind of data on a time series for a particular registrant as well as in cross-sectional comparisons with peer and/or bellwether companies would provide excellent trend data as well as decision-useful information about a particular company's business model and/or its industry.

104. Should we, as proposed, allow a registrant to provide their own categories of upstream or downstream activities? Are there additional categories, other than the examples we have identified, that may be significant to a registrant's Scope 3 emissions and that should be listed in the proposed rule? Are there any categories that we should preclude, e.g., because of lack of accepted methodologies or availability of data? Would it be useful to allow registrants to add categories that are particularly significant to them or their industry, such as Scope 3 emissions from land use change, which is not currently included in the Greenhouse Gas Protocol's Scope 3 categories? Should we specifically add an upstream emissions disclosure category for land use?

Comment: We are of the view that corporate sustainability and climate-related reporting is a journey that is in its early stages, with much learning yet to be achieved. In that regard, we favor allowing a registrant the flexibility to provide their own categories of upstream and downstream activities. The results of those choices will provide insight into unique features of a registrant's business model. At this early stage we believe it more productive to permit a degree of flexibility including allowing registrants to add categories that a registrant believes is significant to them or their industry, even if not currently included in the GHG Protocol's Scope 3 categories, especially since the Proposed Rule is not mandating that only the GHG Protocol may be used to estimate GHG emissions. We believe it is important if we are to require registrants to disclose a quantitative deliverable in this highly complex topic, that registrants be afforded some leeway as to how and what methods they may use to generate the data. The Commission or industry can make needed adjustments or revisions as the learning evolves over time.

106. Should we require a registrant that is required to disclose its Scope 3 emissions to describe the data sources used to calculate the Scope 3 emissions, as proposed? Should we require the proposed description to include the use of: (i) emissions reported by parties in the registrant's value chain, and whether such reports were verified or unverified; (ii) data concerning specific activities, as reported by parties in the registrant's value chain; and (iii) data derived from economic studies, published databases, government statistics, industry associations, or other third-party sources outside of a registrant's value chain, including industry averages of emissions, activities, or economic data, as proposed? Are there other sources of data for Scope 3 emissions the use of which we should specifically require to be disclosed? For purposes of our disclosure requirement, should we exclude or prohibit the use of any of the proposed specified data sources when calculating Scope 3 emissions and, if so, which ones?

Comment: We believe this information is valuable in fully understanding a registrant's business model and its transition risks, and therefore, we agree with the requirement that registrants describe the data sources used to calculate the Scope 3 emissions, as proposed. This information is helpful in assessing the credibility of the registrant's Scope 3 emissions disclosure. We do not believe, however, that a registrant needs to disclose whether data reported in a registrant's value chain is verified or unverified. We would accept these disclosures with the default assumption that registrants will collect, calculate, and disclose its GHG emission data in good faith in the same sense as contemplated for the proposed safe harbor as discussed in the Proposed Rule Section II. G. 3 and FN 553 pertaining to proposed Item 1504 (f) (1). Thus we would support leaving to a registrant's discretion whether it is necessary that the registrant's reporting suppliers verify the data.

133. Should we provide a safe harbor for Scope 3 emissions disclosure, as proposed? Is the scope of the proposed safe harbor clear and appropriate? For example, should the safe harbor apply to any registrant that provides Scope 3 disclosure pursuant to the proposed rules, as proposed? Should we limit the use of the safe harbor to certain classes of registrants or to registrants meeting certain conditions and, if so, which classes or conditions? For example, should we require the use of a particular methodology for calculating and reporting Scope 3 emissions, such as the PCAF Standard if the registrant is a financial institution, or the GHG Protocol Scope 3 Accounting and Reporting Standard for other types of registrants? Should we clarify the scope of persons covered by the language "by or on behalf of a registrant" by including language about outside reviewers retained by the registrant or others? Should we define a "fraudulent statement," as proposed? Is the level of diligence required for the proposed safe harbor (i.e., that the statement was made or reaffirmed with a reasonable basis and disclosed in good faith) the appropriate standard? Should the safe harbor apply to other climate-related disclosures, such as Scopes 1 and 2 emissions disclosures, any targets and goals disclosures in response to proposed Item 1505 (discussed below), or the financial statement metrics disclosures required pursuant to Proposed Article 14 of Regulation S-X? Should the safe harbor apply indefinitely, or should we include a sunset provision that would

eliminate the safe harbor some number of years, (e.g., five years) after the effective date or applicable compliance date of the rules? Should the safe harbor sunset after certain conditions are satisfied? If so, what types of conditions should we consider? What other approaches should we consider?

Comment: Because we are in the camp that supports the notion of requiring all registrants to report Scope 3 emissions regardless of materiality or industry, we also support extending the safe harbor to all Scope 3 emissions disclosed pursuant to proposed subpart 1500 of Regulation S-K made in a document filed with the Commission. We concur with the Commission's reasoning that the safe harbor "may encourage more robust Scope 3 emissions information, to the extent registrants feel reassured about relying on actual third-party data as opposed to national or industry averages for their emissions estimates."

While we agree that the PCAF and other reporting standards are good starting points, we do not believe the benefits of the safe harbor should be conditioned on the use of any specific standard at this point in time. The field of emissions reporting is in its infancy and no doubt will evolve perhaps relatively rapidly in the next few years. At this stage we believe locking in the safe harbor to specific reporting standards is premature.

The language "by or on behalf of a registrant" is a helpful notion as we expect many registrants will retain outside expert assistance in reporting their emissions. The guidance should make clear, however, that a registrant should itself have a reasonable basis for relying on the estimates, opinions, and the deliverables of any third party expert/outside reviewer retained by the registrant. We agree that identifying the outside reviewer retained for this purpose should be disclosed.

We expect a cottage industry of expert consultants and outside climate disclosure experts to blossom if the emissions reporting requirements are indeed adopted. Consequently we believe that such consultants will value their reputations and the economic value of their brand being cited in SEC filings. To further bolster that credibility we suggest that this disclosure not only be made mandatory but that such third party entities should be deemed to be appearing and practicing before the Commission and subject to SEC ethical standards, similar in principle to the Standards of Professional Conduct for Attorney under SEC Part 205[42] (with respect to the Staff of the Commission, familiarity with Part 205 is assumed). As we further comment *infra* on attestations, encapsulating third party expert reviewers and consultants in this manner not only helps to ensure the quality and good faith nature of the reporting but also alleviates the need for attestations. Similar to the Professional Conduct for Attorneys under Part 205, any third party expert retained in connection with preparing climate related disclosures that will be reported under proposed subpart 1500 of Regulation S-K should be defined as "appearing and practicing before the Commission"[43] in a manner that is

[42] See 17 CFR §205.1 et seq.

[43] See 17 CFR §205.2 (a) (1)(iii) and (iv): Appearing and practicing before the Commission means: "Providing advice in respect of the United States securities laws or the Commission's rules or regulations thereunder regarding any document that the attorney has notice will be filed with or submitted to, or incorporated into any document that will be filed with or submitted to, the Commission, including the provision of such advice in the context of

analogous to Part 205. The violation of such proposed Standards of Conduct would preclude such experts from providing services to registrants in connection with climate disclosures under subpart 1500. We believe promulgation of such standards would, because of the economic, financial and reputational repercussions for non-compliance, result in a self-enforcing mechanism driven by commercial self-interest that would support the credibility of reported data and obviate the need for kind of attestations as contemplated under the Propose Rule. We suggest that these proposed standards of conduct for climate reviewers be perpetual and not necessarily linked to safe harbor's sunset if a sunset is adopted.

In recognition of the difficulties and as yet unresolved uncertainties in estimation of GHG emissions, we support extending the safe harbor as contemplated beyond Scope 3 emissions for a period of five years at which time the Commission will, we believe, have sufficient experience and data to reassess whether to terminate, extend or perpetuate the safe harbor.

134. Should we provide an exemption from Scope 3 emissions disclosure for SRCs, as proposed? Should the exemption not apply to a SRC that has set a target or goal or otherwise made a commitment to reduce its Scope 3 emissions? Are there other classes of registrants we should exempt from the Scope 3 emissions disclosure requirement? For example, should we exempt EGCs, foreign private issuers, or a registrant that is filing or has filed a registration statement for its initial public offering during its most recently completed fiscal year from the Scope 3 disclosure requirement? Instead of an exemption, should we provide a longer phase in for the Scope 3 disclosure requirements for SRCs than for other registrants?

Comment: We find no reason to object to an exemption regarding Scope 3 emissions for SRCs (regardless of whether they have set targets or goals), since SRCs are generally not within the High Yield universe of issuers and because we believe SRCs will have significantly less resources available to shoulder the additional time and expense of such reporting. We believe, however, that the exemption should not be perpetual. SRCs that have set targets and goals should be encouraged on a voluntary basis to disclose so long as other SRCs are not mandated to disclose. To provide otherwise is to disincentivize SRCs from making good faith attempts to mitigate GHG emissions in their business models.

After a period of say, five years, the Commission should have enough experience and data to better determine the cost, methodologies, and efficacies of Scope 3 emissions reporting and be able to assess based on evidence whether SRCs should continue to be exempt. With respect to other classes such as ECGs and foreign private issuers, we do not believe these entities should be exempt from GHG reporting simply because of their status without more. That is, on its face, it seems these entities are as capable as any registrant subject to the Proposed Rules. Thus, barring some other legal or other

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preparing, or participating in the preparation of, any such document; or (iv) Advising an issuer as to whether information or a statement, opinion, or other writing is required under the United States securities laws or the Commission's rules or regulations thereunder to be filed with or submitted to, or incorporated into any document that will be filed with or submitted to, the Commission. . . "

reasonably articulated impediment, we would support bringing in as many entities as possible under the Proposed Rule as adopted.

Comments related to Section II H: Attestation of Scope 1 and Scope 2 Emissions Disclosure

135. Should we require accelerated filers and large accelerated filers to obtain an attestation report covering their Scope 1 and Scope 2 emissions disclosure, as proposed? Should we require accelerated filers and large accelerated filers to obtain an attestation report covering other aspects of their climate-related disclosures beyond Scope 1 and 2 emissions? For example, should we also require the attestation of GHG intensity metrics, or of Scope 3 emissions, if disclosed? Conversely, should we require accelerated filers and large accelerated filers to obtain assurance covering only Scope 1 emissions disclosure? Should any voluntary assurance obtained by these filers after limited assurance is required be required to follow the same attestation requirements of Item 1505(b)–(d), as proposed?

Comment: While we appreciate the impulse by some for an independent verification of GHG emissions, we believe that such requirements are premature. As we indicated elsewhere in this letter we approach the forthcoming disclosures with a default assumption of good faith on the part of registrants' management and have doubts as to what the benefits are to be derived from limited attestation and whether reasonable attestation is excessive in light of the already existing requirement that CEOs and CFOs under Sections 302 and 404 of Sarbanes Oxley, take direct responsibility for the accuracy, documentation and submission of all financial reports as well as the internal control structure of the company. We assume that the proposed GHG emission disclosures being part of the registrant's registration and Annual Report will be implicated under the same reporting regime.

We also question the wisdom of requiring separate climate-related attestation for the following reasons:

- The very same experts that we believe are likely most qualified to make a credible science-based assessment of GHG emissions disclosure are exactly the same experts that registrants should be retaining to assist and advise them in producing the metrics. Rather than eliminate an entire body of expert resources to assist registrants to produce high quality data (because of the requirement for "independence"), the Rule should encourage retaining and identifying such experts (subject to standards of conduct) as part of the disclosure as we have suggested in our Comment to Question 133 *supra*.
- We do not believe the conventional audit firms (whom we believe will leap at this revenue producing opportunity) have any particular expertise in assessing these metrics other than their audit skills which may or may not be relevant or as appropriate in these circumstances. We envision that the same large audit firms will have two divisions: one to assist in the reporting, and one to act as independent assessor. We simply do not see the benefit of a "Big Four" or other similar PCAOB-regulated firm shoehorning in Generally Accepted Audit Principles into this space as a better alternative to what we are proposing in our Comments to Question 133.
- For the average investors including the retail investor the presence of an "audit" or similar good housekeeping seal by a public CPA may give a false sense of security and credibility. This can be

counterproductive as some may simply look at the presence of an attestation in a check-the-box manner and assume the disclosed metrics are acceptable. From our perspective we intend to analyze the forthcoming disclosures regardless of whether they have limited or reasonable assurance. In short, we opine that the absence of such good housekeeping seals of approval will actually serve to encourage investors to give these materials a close and critical review.

- By using the accounting terms "limited assurance" and "reasonable assurance," by default the universe of experts eligible to perform independent assessments almost by default contracts to PCAOB-registered accounting firms. We believe this disadvantages unfairly other vendors with expertise in climate matters that may in fact have superior skills than public accounting firms in this space. And to the extent accounting firms have credibly built up expertise in estimating GHG emissions, they should be retained for the purpose of assisting the companies to comply with the required disclosures and not simply to perform limited or reasonable assurance.
- In all likelihood most registrants in the High Yield space will probably not have sufficient internal resources and will, we expect, need to retain experts to assist; a cost that will be exacerbated by the added requirement to retain a third party independent assessment. At this stage of the journey we believe the added expense is not helpful for the reasons we cite herein.
- Finally, we believe, as we state in our Comment to Question 194 the combination of Sarbanes Oxley sections 302 and 404 and the liability provisions under the Securities Act and Exchange Act commensurate with documents that are filed — not furnished — with the Commission operate to provide necessary and sufficient credibility without the need for the added expense of a separate climate-related attestation.

Comments related to Section II I: Targets and Goals Disclosure

168. Should we require a registrant to disclose whether it has set any targets related to the reduction of GHG emissions, as proposed? Should we also require a registrant to disclose whether it has set any other climate-related target or goal, e.g., regarding energy usage, water usage, conservation or ecosystem restoration, or revenues from low-carbon products, in line with anticipated regulatory requirements, market constraints, or other goals, as proposed? Are there any other climate-related targets or goals that we should specify and, if so, which targets or goals? Is it clear when disclosure under this proposed item would be triggered, or do we need to provide additional guidance? Would our proposal discourage registrants from setting such targets or goals?

Comment: Yes, we agree that a registrant should be required to disclose whether it has set any targets related to the reduction of GHG emissions as proposed including but not limited to also disclosing any other climate-related target or goal. Other climate-related goals concerning biodiversity and deforestation also come to mind as specific subjects although those could be considered a subset of conservation or ecosystem restoration. We support these disclosures because they will allow us to monitor over time a registrant's progress in achieving these goals and to compare the disclosures to peer groups or other bellwether companies in the same or similar industry. Moreover, such disclosures will also be helpful in identifying trends, such as the number of High Yield companies within a particular industry or sector that have embraced climate action in the form of targets and goals. We believe the disclosure should be triggered when a company has formally adopted such targets and goals (e.g., board or CEO approved). We believe the requirement for a formal adoption would allow companies to launch beta versions or initial targets and goals without formally adopting them. This, we believe, would actually encourage companies to informally launch targets and goals to determine feasibility. Once a company becomes comfortable with such efforts they can formally adopt them and begin disclosing the details, such as providing baseline data and other metrics that can be used to track subsequent disclosures. We believe continued advocacy from stakeholders (both shareholders and bondholders) during engagements and other communications will encourage companies to consider launching pilot programs in anticipation of public disclosure. The pre-launch trial period before formal adoption permits companies the ability to consider such targets and goals without the immediate pressure to publicly disclose such efforts until the company has had the opportunity to fine tune the program. In sum, we believe that a premature requirement to mandate disclosure of targets and goals before companies get comfortable with the concept in practice would operate to discourage companies from setting such targets and goals. Put another way, borrowing a notion from the technology space, the Commission should permit a "sandbox" for companies to initially work with targets and goals without the immediate requirement for public disclosure.

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?

Comment: For the reasons cited in the Proposed Rule and in our Comments to Question No. 24, *supra*, we agree that registrants should be required 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.

Comments related to Section II J: Registrants Subject to the Climate-Related Disclosure Rules and Affected Forms

176. Should we require foreign private issuers that report on Form 20-F to provide the same climate-related disclosures as Form 10-K filers, as proposed? Should we require climate-related disclosures in the registration statements available for foreign private issuers, as proposed? If not, how should the climate-related disclosures provided by foreign private issuer registrants differ from the disclosures provided by domestic registrants?

Comment: For reasons cited in the Proposed Rule we agree that foreign private issuers that report on Form 20-F should be required to provide the same climate-related disclosures as Form 10-K filers as well as in registration statements, as proposed. We believe it only fair that foreign private issuers sourcing capital from U.S. markets be held to the same requirements as U.S.-based registrants.

178. Should we require the climate-related disclosure in the forms specified above? Is the application of the proposed rules to the forms sufficiently clear, or should we include additional clarifying amendments? For example, would the application of proposed Article 14 to Forms 20-F, F-1 and F-3 be sufficiently clear when a registrant prepares its financial statements pursuant to IFRS as issued by the International Accounting Standards Board ("IASB") without reconciliation to U.S. generally accepted accounting principles ("U.S. GAAP"), or should we add a related instruction to those forms?

Comment: Because these requirements are new and may take time for companies to adjust and comply we think it would be helpful to provide added guidance for foreign companies that prepare financial statements pursuant to IFRS as issued by the IASB. Such guidance would also be helpful from our perspective as readers of IFRS-issued financial statements.

183. Should we adopt an alternative reporting provision that would permit a registrant that is a foreign private issuer and subject to the climate-related disclosure requirements of an alternative reporting regime that has been deemed by the Commission to be substantially similar to the requirements of proposed Subpart 1500 of Regulation S-K and Article 14 of Regulation S-X to satisfy its disclosure obligations under those provisions by complying with the reporting requirements of the alternative reporting regime ("alternative reporting provision")? If so, should we require the submission of an application for recognition of an alternative reporting regime as having substantially similar requirements for purposes of alternative reporting regarding climate-related disclosures? Should we permit companies, governments, industry groups, or climate-related associations to file such an application? Should we require the applicant to follow certain procedures, such as those set forth in 17 CFR 240.0-13?

Comment: We support the proposal to permit a registrant that is a foreign private issuer and subject to the climate-related disclosure requirements of an alternative reporting regime to satisfy its disclosure obligations under those provisions by complying with the alterative reporting regime *provided however*, that the alternative reporting regime has been deemed by the Commission as substantially similar to the requirements of proposed Subpart 1500 of Regulation S-K and Article 14 of Regulation S-X. So long as the Commission *sua sponte* has determined that the alternative reporting provisions are substantially similar to that required of U.S. domestic registrants, we see no added benefit in requiring the submission of an application for recognition of an alternative reporting regime. The only time an application may make sense is if a new reporting regime in the future not yet recognized by the Commission becomes widely accepted. In those instances a streamlined procedure should be implemented with the primary intention of alerting the Commission to such a newly emerging alternative reporting regime so that the Commission can opine on whether it agrees that the new regime is substantially similar.

189. An International Sustainability Standards Board (ISSB) has recently been created, which is expected to issue global sustainability standards, including climate-related disclosure standards. If we adopt an alternative reporting provision, should that provision be structured to encompass reports made pursuant to criteria developed by a global sustainability standards body, such as the ISSB? If so, should such alternative reporting be limited to foreign private issuers, or should we extend this option to all registrants? What conditions, if any, should we place on a registrant's use of alternative reporting provisions based on the ISSB or a similar body?

Comment: The ISSB has issued draft standards on climate-related disclosures that are closely modeled on the TCFD and goes a step further because the ISSB has also incorporated disclosure requirements derived from SASB Standards with its emphasis on industry-based metrics. Because the ISSB also has a "materiality" threshold, however, this may result in a company's reporting under the ISSB Standards to differ from the Proposed Rule to the extent GHG emissions in the Proposed Rule are required to be disclosed regardless of materiality (e.g., Scope 1 and 2, and if as we urge Scope 3 regardless of materiality). Hence, we would recommend the Commission to condition the use of the ISSB standards to a requirement that a company using the ISSB alternative reporting provision disclose substantially the same metrics but not necessarily in the same format required under the provisions of the Proposed Rule that are finally adopted.

Comments related to Section II K: Structured Data Requirement

190. Should we require registrants to tag the climate-related disclosures, including block text tagging and detail tagging of narrative and quantitative disclosures required by Subpart 1500 of Regulation S-K and Article 14 of Regulation S-X in Inline XBRL, as proposed? Should we permit custom tags for the climate-related disclosures?

Comment: We think it might be preferable to make this requirement voluntary. While it would probably be helpful for users of XBRL to access the climate-related disclosures if Inline SBRL is mandated as proposed, we have no data as to how many investors actually rely on XBRL functionality in their analysis.

Comments related to Section II L: Treatment for Purposes of Securities Act and Exchange Act

194. Should we treat the climate-related disclosures required by proposed subpart 1500 of Regulation S-K and proposed Article 14 of Regulation S-X as filed for purposes of potential liability under the Securities Act and Exchange Act, except for the climate disclosures on Form 6-K, as proposed? Should we instead treat the climate-related disclosures required by both proposed subpart 1500 of Regulation S-K and proposed Article 14 of Regulation S-X as

furnished? Are there reasons why the proposed climate-related disclosures should not be subject to Section 18 liability?

Comment: We urge the Commission to adopt the requirement that climate-related disclosures required by proposed subpart 1500 of Regulation S-K and proposed Article 14 of Regulation S-X as filed — not furnished — for purposes of potential liability under the Securities Act and Exchange Act as proposed. Because we are also advocating to eliminate the proposed requirement for an attestation of the climate-related disclosures for the reasons cited in our Comment to Question 135, the liability provisions under Exchange Act Section 18 and Securities Act Section 11, we believe, adds further credibility to the climate-related disclosures if adopted as proposed. From our perspective the combination of Sarbanes Oxley sections 302 and 404 (requiring CEO and CFO attestations) and the liability provisions commensurate with documents that are filed not furnished provides necessary and sufficient safeguards to ensure that the climate-related disclosures if adopted as proposed will achieve their stated purpose of providing investors with comparable, consistent, reliable and decision-useful information and data. Despite the relative newness and complexity of the proposed climate-related disclosures, we see no persuasive reason why the proposed climate-related disclosures should not be subject to Section 18 liability for knowingly making false or misleading statements. We believe the contemplated safe harbor in the Proposed Rule Scope 3 emission disclosures and the forward-looking statement safe harbor under the Private Securities Litigation Reform Act of 1995 offer adequate offset to the liability provisions of the securities law in discouraging frivolous claims and lawsuits.

Comments related to Section II M: Compliance Date

197. Should we provide different compliance dates for large accelerated filers, accelerated filers, non-accelerated filers, or SRCs, as proposed? Should any of the proposed compliance dates in the table above be earlier or later? Should any of the compliance dates be earlier so that, for example, a registrant would be required to comply with the Commission’s climate-related disclosure rules for the fiscal year in which the rules become effective?

Comment: We support the compliance dates for large accelerated filers, accelerated files, and non-accelerated filers, or SRCs as proposed. We believe the compliance dates are not unreasonable and gives sufficient lead time for registrants to prepare while also not unduly delaying these important disclosures for investors eager to receive them. It might be helpful, however, to allow for registrants to voluntarily comply earlier than the proposed dates if they are willing and able to do so.

198. Should we provide a compliance date for the proposed Scope 3 emissions disclosure requirements that is one year later than for the other disclosure requirements, as proposed? Should the compliance dates for the Scope 3 emissions disclosure requirements be earlier or later? Should the compliance date for the Scope 3 emissions disclosure requirements depend upon whether the registrant is a large accelerated filer, accelerated filer, or non-accelerated filer?

Comment: Because of the generally recognized difficulties and complexities of measuring Scope 3 emissions, we support the one year lag as proposed, although filers should be permitted to comply earlier if they are able and willing to do so. We have no reason to question the underlying assumption that large accelerated filers have more resources than accelerated filers who have more resources than non-accelerated filers, and thus are proportionately more capable of reporting on Scope 3 emissions.

199. Should we provide different compliance dates for registrants that do not have a December 31st fiscal year-end?

Comment: Yes, as demonstrated in the example of the March fiscal year end provided in the Proposed Rule allowing for registrants with a fiscal year end other than December 31 appears to us the right balance of fairness and efficiency.

200. Should we include rules or guidance addressing less common situations, such as, but not limited to, reverse mergers, recapitalizations, other acquisition transactions, or if a registrant's SRC (or EGC) status changes as a result of such situations?

Comment: Yes we would welcome such guidance in such less common situations including providing for the possibility of a change in status for SRC, EGCs, or for that matter large accelerated filers or any other change in status.

201. Are there other phase-ins or exemptions regarding any or all of the proposed rules that we should provide?

Comment: We have no further input apart from what we have suggested in the discussion throughout this letter and in our Concluding Comments in Part III.

Part III: Concluding Comments and Recommendations

In our concluding remarks we again wish to commend the Commission on the Proposed Rule and thank the Commission for this opportunity to provide our comments, observations, and recommendations. With the exception of attestation, we are in substantial agreement with most of the provisions of the Proposed Rule as reflected in our comments to selected questions despite our view that the current zeitgeist of shareholder primacy that generally permeates disclosure regulation from our perspective is somewhat "archaic and no longer reflects reality because bonds now exceed equity shares as a source of corporate financing."[44]

In that regard, this letter has attempted to describe the unique character of the High Yield market and the important role this market plays in financing American corporations across a broad range of industry sectors. Because of the majority of the High Yield market now comprises exempt offerings under Rule 144A and the rise of "144A-for-life" debt, we believe, as Commissioner Herren-Lee and others have suggested, the Commission should act to reverse the tide of companies avoiding the public markets to

[44] See FN 21 *supra* and accompanying text.

escape regulation and disclosure. We believe this is an opportune time for the Commission to consider providing remedial action to address the significant proportion of this market that are not and presumably will not be subject to the same required climate-related disclosures contemplated for registrants under the Proposed Rule.

As Commissioner Herren-Lee remarked in her recent speech, "we are again watching a growing portion of the U.S. economy go dark, *a dynamic the Commission has fostered — both by action and inaction*." (emphasis added; internal citation omitted).[45] Although Commissioner Herren-Lee's comments were focused primarily on the equity market, her logic and warning of the dangers of "going dark" are in our view equally applicable if not more so concerning the High Yield market.

The case for amending Rule CFR 230.144A(d)(4)(i) and (ii)(A) and (B)

Our recommendation concerning measures intended to expand the information available to High Yield investors by issuers of exempt offerings under Securities Act, Rule 144A is intended to level the playing field. The 144A issuer market has evolved and bears little resemblance the 144A issuer market of 1990 when the rule was originally promulgated. Except for a minor amendment in 1992 to fix apparent typos (57 FR 38722), the Commission has reviewed Rule 144A substantively only two times since: once in 2013 (78 FR 44804, July 24, 2013) and then in 2020 (85 FR 64276).

In both instances the focus has been on the buyers of Rule 144A exempt offerings. No changes in the conditions in which issuers taking advantage of exempt offerings under Rule 144A has been considered by the Commission in the thirty years since the Rule was originally promulgated. We believe this is an opportune time to consider bringing issuers of exempt offerings under Rule 144A in the High Yield market under the same climate-related disclosures as contemplated for registrants in the Proposed Rule.

We believe this can be achieved by an explicit clarification of what constitutes "reasonably current" financial information under CFR 230.144A(d)(4)(i) and (ii)(A) and (B), which currently is conditioned on modest information requirements that, in our judgment, are no longer commensurate with the size and character of the modern 144A bond market. Moreover, we note that such a strengthening of the information requirements under Rule 144A would not be a shocking change since many issuers in this market already model their Rule 144A disclosure documents after public offering prospectuses and financial statements. Even though the SEC's line item disclosure rules do not strictly apply to exempt offerings under Rule 144A, many companies, nevertheless, follow SEC rules as if they applied to Rule 144A offering.[46] Our proposal for a modest amendment of "reasonably current" financial information to be commensurate with filings by registrants is intended to encourage those issuers of exempt offerings to continue the practice of abiding by SEC norms in financial information and to bring in the large number of issuers not subject to and not voluntarily providing such information into the same regulatory regime as applies to registrants.

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[45] See FN 6 *supra* and accompanying text.
[46] See FN 27 Financial Statement Requirements in U.S. Securities Offerings, at 22.

To be clear we are not advocating that issuers of exempt securities under other applicable sections of Regulation D of the Securities Act of 1933, as amended, also be required to provide financial information commensurate with the Proposed Rule because that might be overly burdensome for smaller issuers under certain sections of Regulation D designed precisely for smaller or state-only issuers.

The High Yield universe, however, generally involves companies that raise at least $250 million per High Yield debt issue, and many companies in the High Yield market have multiple issues outstanding at the same time with varying maturity dates or characteristics. Issuers of exempt debt offerings under Rule 144A with that kind of balance sheet capacity, in our opinion, should be subject to the climate-related disclosures in the Proposed Rule, as adopted. In the words of Commissioner Herren-Lee, "the Commission can and should act now within [its] existing authority to restore transparency in the capital markets."[47]

We welcome the opportunity to discuss these comments with the Commission or the Commission's Staff.

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Respectfully submitted on behalf of SKY Harbor Capital Management, LLC

/S/

Gordon Eng

[47] *Supra* FN 6.