WE MAKE CLEAN ENERGY HAPPEN®

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June 17, 2022

Ms. Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549

RE: Request for Public Comment on Proposed Enhancement and Standardization of Climate-Related Disclosures for Investors (Release Nos. 33-11042; 34-94478; File No. S7-10-22) ("Proposed Rules")

Dear Ms. Countryman:

The Williams Companies, Inc. ("Williams" or the "Company"), a Fortune 500 energy infrastructure company primarily engaged in the gathering, processing and transportation of natural gas and natural gas products, submits these comments to the Securities and Exchange Commission (the "SEC") regarding the Proposed Rules.

I. Williams is leading efforts in the midstream energy sector to pursue climate-related opportunities and transparently report on climate-related matters.

In 2018, we began republishing our Sustainability Report, which can be found on our website, www.williams.com. We reference the Sustainability Accounting Standards Board, Task Force on Climate-related Financial Disclosures, GRI Standards, and the United Nations Sustainable Development Goals to guide the development of our Sustainability Report, which is prepared in accordance with the GRI Standards: Core option. Our report includes the disclosure of both Scope 1 and Scope 2 greenhouse gas ("GHG") emissions. For our latest Sustainability Report published in July 2021 covering our operations from January 1 through December 31, 2020, we conducted independent third-party limited assurance for select 2020 GHG emissions, pipeline integrity and safety data.

In August 2020, we became the first North American midstream company to announce a comprehensive climate commitment that includes real goals with clear expectations for our organization. We also provided leadership and guidance on environmental, social, and governance ("ESG") performance metrics. Our chief executive officer co-chaired an effort with the Energy

Infrastructure Council to produce a midstream industry-wide reporting template for ESG measurers to present sustainability metrics that matter most to shareholders in a transparent and comparable way. As a member of the Interstate Natural Gas Association of America board, we helped outline the organization's initial climate commitment. In 2021, we launched New Energy Ventures, a business development group focused on commercializing innovative technologies, markets and business models to grow our clean energy business. Our efforts include solar projects, renewable natural gas ("RNG") interconnections to our infrastructure, battery projects in initial or early development stages, and critical partnerships to lead efforts to develop scalable hydrogen and carbon capture solutions.

As a result of our ESG imperatives, Williams ranked No. 1 in its peer group in the Dow Jones Sustainability Index for 2021 and was the only U.S. energy company to be included in both their world and North America indices.

Williams continues to work on transparently reporting climate-related matters. For example, we recently announced a collaboration with other natural gas midstream companies, methane detection technology providers, and leading academic institutions to improve the overall understanding of GHG and further the deployment of the most advanced monitoring technologies and protocols to enhance clean energy supply and delivery for Williams and its customers. This collaboration further supports our recently announced partnership with Context Labs to utilize a technology solution to provide verified emissions profiles and the progress of GHG mitigation across the natural gas value chain to support the gathering, marketing, and transporting of responsibly sourced gas from well-head to end-user. If the SEC moves forward with the Proposed Rules, Williams believe such efforts will suffer as companies focus on compliance with extensive granular requirements governing disclosure of information that is financially immaterial, rather than innovative efforts to problem solve and pursue opportunities to alleviate climate challenges. As further outlined below, Williams urges the SEC to reconsider prescriptive regulation and allow for material financial disclosures pursuant to current regulations and voluntary disclosures of other sustainability efforts and metrics. Voluntary disclosures provide opportunity for the terminology and methodologies around disclosure of climate-related risk and opportunities to continue to evolve and improve at the hands of industry participants who are in the best position to drive substantive change.

II. The information required by the Proposed Rules will flood investors with immaterial or inherently unreliable disclosures, which would not significantly alter the total mix of information currently available to shareholders.

Companies disclose climate-related risks and impacts pursuant to current SEC regulations.[1] In compliance with existing regulations, Williams provides a variety of different disclosures

[1] *See* Proposed Rules at 126 ("Although we agree that registrants are currently required to disclose material financial impacts on the financial statements…"); *see also* Statement by Commissioner Pierce on Proposed Mandatory Climate Risk Disclosures, March 21, 2022 ("Existing rules require companies to disclose material risks regardless of the source or cause of the risk. … Even under our current rules, climate-related information could be responsive to a number of existing disclosure requirements.")(citing Item 101 of Regulation S-K, Description of Business; Item 103 of Regulation S-K, Legal Proceedings; Item 105 of Regulation S-K, Risk Factors; Securities Act Rule 408 and Exchange Act Rule 12b-20); Commission Guidance Regarding Disclosure Related to Climate Change, Release Nos. 33-9106; 34-61469; FR-82 (Feb. 8, 2010), available at https://www.sec.gov/rules/interp/2010/33-9106.pdf (providing companies examples of how current SEC regulations apply to climate-related matters).

regarding the environment and climate-related matters. The bedrock principle of materiality informs our disclosures. The Proposed Rules, however, require granular climate-related disclosures that depart from the materiality standard as follows: (1) mandating certain climate-related disclosures for all companies regardless of materiality; (2) prescribing low thresholds for climate-related disclosures for all companies regardless of materiality; and (3) requiring certain climate-related disclosures when material but utilizing a materiality standard that departs from the historical definition of the term. As a result, the Proposed Rules will likely result in the forced disclosure of an abundance of immaterial information, some of which is inherently unreliable and could be misleading for investors.

Materiality is a well-tested concept that underpins United States' securities law and defines the outer boundary of required financial disclosures and business risks.[2] A matter is material if there is a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities or how to vote.[3] The Supreme Court has clarified that "to fulfill the materiality requirement 'there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.'"[4] The Supreme Court has been "careful not to set too low a standard of materiality," for fear that management would "bury the shareholders in an avalanche of trivial information."[5] Such information overload is "hardly conducive to informed decision making" by investors.[6] Nor do registrants have a duty to disclose information "merely because a reasonable investor would very much like to know that fact"[7] or because information *might* be important.[8]

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[2] *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *see also Basic, Inc. v. Levinson*, 485 U.S. 224 (1988) (finding that information is material for purposes of the securities laws if there is "a substantial likelihood that the … fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.").

[3] *See* 17 CFR 240.12b-2; *see also Basic*, 485 U.S. at 230-40 (1988) (holding that information is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision and applying this standard to § 10(b) and Rule 10b-5 actions under the Securities Exchange Act).

[4] *Basic,* 485 U.S. at 230-40.

[5] *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 38 (2011) (cleaned up) (quoting *Basic*, 485 U.S. at 231 and *TSC Industries, Inc.*, 426 U.S. at 448-9).

[6] *Basic*, 485 U.S. at 231.

[7] *Meyer v. Jinkosolar Holdings Co., LTD.*, 761 F.3d 245, 250 (2d Cir. 2014) (*quoting In re Time Warner Inc. Securities Litigation*, 9F.3d 259 (2d. Cir. 1993)); *see also TSC Industries*, 426 U.S. at 448-49.

[8] *TSC Industries*, 426 U.S. at 448-449 ("Some information is of such dubious significance that insistence on its disclosure may accomplish more harm than good. …[I]f the standard of materiality is unnecessarily low, not only may the corporation and its management be subject to liability for insignificant omissions or misstatements, but also management's fear of exposing itself to substantial liability may cause it simply to bury the shareholders in an avalanche of trivial information a result that is hardly conducive to informed decisionmaking. Precisely these dangers are presented, we think, by the definition of a material fact adopted by the Court of Appeals in this case a fact which a reasonable shareholder *might* consider important. We agree with Judge Friendly, speaking for the Court of Appeals in *Gerstle*, that the "might" formulation is "too suggestive of mere possibility, however unlikely." The general standard of materiality that we think best comports with the policies of Rule 14a-9 is as follows: An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.").

Companies routinely apply the materiality standard when determining what to disclose pursuant to SEC regulations. To avoid flooding investors with immaterial information, Williams requests the SEC utilize the materiality standard for all proposed climate-related disclosures.

A. The Proposed Rules mandate the disclosure of Scope 1 and 2 GHG emissions on a new timeline and with new methodology and attestation requirements, which would result in duplicative and confusing immaterial disclosures.

Existing Environmental Protection Agency ("EPA") regulations require certain companies to publicly disclose Scope 1 GHG emissions. These companies submit GHG emissions data to the EPA by March 31st for the previous calendar year. EPA requires certification of the annual GHG emissions by the facility owner's designated representative, and the EPA assures the quality of reported emissions through the use of statistical, algorithm, range, and other verification checks. Error messages are sent by the EPA to the designated representative in instances where errors or anomalies are detected, and companies have 45 days to correct substantive errors. GHG emissions data for the previous year is published by EPA in August in its Facility Level Information on Greenhouse Gases Tool ("FLIGHT"). Williams discloses Scope 1 GHG emissions as defined by the EPA in accordance with EPA regulations. Williams also discloses Scope 1 and Scope 2 GHG emissions in a separate Sustainability Report published on a similar time frame as the EPA FLIGHT.

Nevertheless, the proposed Item 1504 requires companies to disclose Scope 1 and Scope 2 GHG emissions on a different timeline and using different methodologies than existing regulations and business practices, regardless of materiality. Some challenges companies will face in complying with the proposed disclosure requirements include the following:

- Reporting GHG emissions on an early timeline. Annual Scope 1 GHG emissions are initially reported to the EPA on March 31 of the following year and published by the EPA in August after completion of the verification process. Similarly, Williams publishes Scope 1 and Scope 2 GHG emissions in its Sustainability Report later in the year. For example, we published our 2020 Sustainability Report at the end of July 2021. In contrast, the Proposed Rules require publication of Scope 1 and 2 GHG emissions data in the Form 10-K, which for Williams, would be filed in mid-February of the following year before it has even fully gathered and finalized emissions data for the initial report of Scope 1 GHG emissions to the EPA.

- Departing from EPA GHG emissions reporting requirements. EPA GHG emissions reporting regulations have threshold requirements and do not require reporting of emissions from facilities below a certain threshold.

- Utilizing a different GHG emissions reporting organizational boundary. EPA GHG emissions reporting is done on a facility-by-facility basis. Williams and other companies rely on GRI Standards for Sustainability Reports. These standards allow companies to use financial control, operational control, or equity share in determining organizational boundaries for GHG emissions reporting purposes.[9] Similarly, the TCFD in its recommendations provides that

[9] GRI Standards, GRI 305: Emissions 2016.

GHG emissions should be calculated in line with the GHG Protocol methodology.[10] The GHG Protocol also allows for reporting on an operational control basis.[11] In contrast, the Proposed Rules, "require a registrant to set the organization boundaries for its GHG emissions using the same scope of entities, operations, assets and other holdings within its business organization as those included in and based upon the same set of accounting principles applicable to its consolidated financial statements."[12] Williams currently reports Scope 1 GHG emissions to the EPA on a facility basis and voluntarily reports Scope 1 and 2 GHG emissions in its Sustainability Report on an operational control basis using location-based calculation methodologies inherent in EPA's Mandatory GHG Reporting Rule (for Scope 1 emissions) and in EPA's e-GRID database (for Scope 2 emissions). The proposed Item 1504 requires Williams to report GHG emissions using a different methodology and will generate confusion between GHG emissions data filed with the SEC and GHG emissions data filed with the EPA or published voluntarily. For assets that we do not operate, such as some where we are party to a joint venture, we may have to obtain GHG emission data from third parties, which will pose significant challenges to our ability to gather the data and to verify it. Furthermore, Williams sets GHG CO2e emission reduction targets based on its current operational control methodology of reporting GHG emissions. GHG emission data filed with the SEC could potentially conflict with our GHG emissions reduction goals. Nor is it practical for Williams to develop, vet and validate new targets based on different organizational boundaries.

- Restating historical emissions reporting with a different methodology will be equally burdensome.

- Applying financial attestation requirements used for actual quantifiable financial information outside the scope of financial statements to attest to GHG emissions reports based largely on estimates and calculations.

The SEC fails to articulate how disclosing GHG emissions in the Form 10-K on a different timeline, using a different methodology, and applying a different verification process provides investors with material information. The SEC does not indicate how the SEC's version of GHG emission disclosures provides additional protection to an investor or significantly alters the total mix of information available to an investor. Instead, the end result will likely be significant confusion. Furthermore, pure quantitative GHG emission disclosures may fail to capture the material realities of a company. For example, the quantification of GHG emissions for an individual company fails to capture whether global GHG emissions are being reduced or increased. As noted in several industry comment letters, increased consumption of natural gas produced in the United States can help displace more carbon intensive fuels, such as coal. If an investor only looks to Williams' quantitative GHG emissions data disclosure, the investor may miss this crucial perspective and the role of Williams, a natural gas infrastructure company, in global emissions reduction.

The Proposed Rules also require disclosure of GHG emissions intensity in terms of metric tons of CO2e per unit of total revenue and per unit of production. The SEC fails to articulate how this

[10] Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures (October 2021) at 21, available at https://assets.bbhub.io/company/sites/60/2021/07/2021-TCFD-Implementing_Guidance.pdf.
[11] WRI (2004), *The Greenhouse Gas Protocol, Revised Edition,* Chapter 3 – Setting Organization Boundaries at 16-23.
[12] Proposed Rules at 195-6.

disclosure is material. For example, revenue may change dramatically depending on the price of commodities, which is driven by a multitude of different factors or upon our contract structure and exposure to commodity prices. This may cause swings in emissions intensities, the disclosure of which ultimately will not provide value to the shareholder because it would not address the registrant's management of GHG emissions. Furthermore, Williams, as a midstream company who transport natural gas, cannot calculate emissions intensity based on unit of production.

B. The Proposed Rules mandate certain disclosures in the financial statement footnotes if certain thresholds are met, which will result in the disclosure of information that is immaterial and not comparable between companies.

The current SEC rules require disclosures around the material effects of new legislation, material legal proceedings, material risks, and known trends reasonably likely to have a material effect on a company's financials as follows:

- Item 101 Description of Business. Requires a description of the business including the material effect that compliance with government regulations, including environmental regulations, may have upon capital expenditures, earnings, and the competitive position of the company.[13]

- Item 103 Legal Proceedings. Requires a description of material pending legal proceedings, including administrative or judicial proceedings arising under laws or provisions enacted to regulate the discharge of materials into the environment or primarily for the purpose of protecting the environment.[14]

- Item 105 Risk Factors. Requires disclosure of material factors that make investment in a company speculative or risky.[15]

- Item 303 Management's Discussion and Analysis of financial condition and results of operations. Requires a company to identify and disclose known trends, events, demands, commitments, and uncertainties reasonably likely to have a material effect on financial condition or operating performance.[16]

To the extent a weather or climate-related event or trend has a material impact, whether it manifests as new legislation, consumer preference, or a severe weather event, a registrant would already disclose the impact pursuant to the above-described regulations as outlined in the SEC's 2010 guidance.[17]

In contrast, The Proposed Rules amend Regulation S-X, which lays out the specific form and content of the financial statement reports and associated footnotes of public companies, to require companies to include a quantitative disclosure regarding climate-related impacts to a company's financials on a line-by-line basis. Specifically, the Proposed Rules mandate that companies provide disaggregated information about the impact of climate-related conditions and events and

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[13] 17 CFR 229.101.
[14] 17 CFR 229.103.
[15] 17 CFR 22.105.
[16] 17 CFR 229.303.
[17] Commission Guidance Regarding Disclosure Related to Climate Change, Release Nos. 33-9106; 34-61469 (Feb. 2, 2010), *available at* http://sec.gov/rules/interp/2010/33-9106.pdf.

transitions activities on the consolidated financial statements unless the aggregated impact of such items is less than one percent of the total line item for the relevant fiscal year.

This is a new reporting requirement that is a major departure from the current regulatory regime potentially asking companies to measure and audit items that have no basis in generally accepted accounting principles ("GAAP") and applying a threshold that is significantly lower than any materiality threshold. The Proposed Rules are also a major departure from the TCFD framework, which makes no mention of any sort of 1% threshold.

Again, the SEC provides no direction for how to comply with the new requirements. Examples of the issues that may arise include the following:

- Distinguishing climate-related conditions, events, and transition activities from other routine company activities. For example, designing facilities for a certain type of weather-related risk or for efficiency may or may not pertain to a climate-related risk. Nor do we have guidance for determining the impact, whether it would be certain parts of the facility or the whole facility. Revenue changes due to a certain commodity price most likely reflect several factors, which may or may not include climate transition factors. Replacing aging equipment may simply be for cost savings or safety purposes. Companies have no guidance for determining whether a weather event or seasonal storm activity is severe or whether it resulted from climate change.

- Updating accounting systems or processes to make the above-described distinctions. Even if there was sufficient clarity to identify such expenditures and costs, accounting systems may not have the ability to systematically accumulate and report this additional non-GAAP information, requiring either system modifications or significant manual compilation efforts.

- Developing new policies and controls. Accounting for climate impacts would require companies to write entirely new and significant accounting policies, design and implement new controls, and develop and potentially pay for new software.

- Measuring items that have no basis in GAAP. For example, the consideration of transition risks might force registrants to calculate "lost revenue," but that concept does not exist under GAAP. This also calls into question what standard will serve as the basis for the external audit.

- Tracking items outside of a company's ledger accounts based on judgments and assumptions. For example, registrants would have to detail costs savings arising from investments that related to climate mitigation, which is not accounting information tracked in a registrant's accounting system.

- Including third-party financial information in a registrant's financial statements. The definition of transition risk includes "value chains," which suggests a registrant may have to include the transition impacts on a registrant's suppliers or third parties in its own financial metrics. Registrants would need to assess the impact of climate-related transition activities on a supplier for which companies have no guidance or ability to do.

- Tracking absolute value of all impacts on a per-line-item basis. Such tracking is very difficult and fails to account for mitigation efforts such as insurance, which would net against the gross value of any loss.

- Applying a 1% threshold. Such application is very difficult because whether something hits the threshold will not be known until the financial statements are prepared and will result in different materiality levels being applied for the same registrant depending on the amount reported for each line item.

- Implementing large scale changes to the audited financial statements without guidance from the Public Company Accounting Oversight Board.

- Applying different accounting rules historically.

The SEC fails to articulate how mandating these line-by-line impacts that apply an unprecedentedly low threshold provides any new financially material information. As noted above, most will simply be untethered judgments and assumptions that will not be consistent or comparable across registrants. As such, their materiality and therefore usefulness to an investor is highly questionable. The qualitative disclosures already built into the SEC regulatory framework provide much more useful information to investors than financially immaterial line-by-line quantifications.

C. The Proposed Rules require certain disclosures where material but apply a different materiality standard than one historically used by companies, including coupling the requirement with certain mandatory disclosures of immaterial information.

1. Item 1502: Climate Related Risks.

As previously mentioned, when material, climate-related disclosures would fall under the scope of Items 101, 103, 105, and 303 pursuant to current SEC regulations. In compliance with these regulations, Williams discloses several risk factors regarding weather-related events, emerging technologies, customer and investor preference, and new regulations, many of which are specifically related to the climate or environment.

Nevertheless, the proposed Item 1502 would require companies to disclose risks likely to have a material affect across a registrant’s value chain and assess risk over the short, medium and long term. If a registrant does find certain climate-related risks are material, then the Proposed Rules mandate that the registrant include detailed disclosures solely about the climate-related risks such as identity of location by zip code; identity of the percentage of assets subject to the risk; the actual or potential impacts on business operations, products and services, and value chains; activities to mitigate or adapt to the risk; expenditures for research and development; and any other significant changes or impacts. Disclosures must include a time horizon and details on how a registrant considered the identified impacts of the climate-related risk as part of its business strategy, financial planning, and capital allocation, including any use of carbon offsets or renewable energy credits, internal carbon prices, and internal scenario analysis.

Potential challenges in complying with the Proposed Rules include:

- Distinguishing climate-related risks from other risks. For example, some strategy decisions, such as those based on forecasted demand, may reflect many different risks, and it would be

very difficult to understand precisely how much or what part of the impact or subsequent strategy is solely climate related.

- Making reliable future projections. The SEC offers no guidance for how to reliably project medium-or long-term risks.

- Assessing risk of a registrant's value chain. This task is especially onerous for a midstream infrastructure company such as Williams who provides federally regulated transportation services for shippers without necessarily knowing where the product being shipped originated or where it will go or how it will be used once it leaves the pipeline. Even if Williams could reliably identify companies in its value chain and the myriad of climate-related risks they may face, Williams does not possess special inside information that would allow it to assess the climate-related risk of its value chain for purposes of assessing materiality.

- Requiring granular disclosure regarding climate-risks based on mere projections and assumptions.

- Disclosing confidential decision-making information and processes such as scenario analysis and internal carbon pricing.

The SEC fails to articulate how untethered future projections and estimates and assumptions regarding risks of third parties are material for a registrant's investors or would result in any sort of comparable disclosure across companies. Nor do the mandated granular disclosures regarding the location of assets possibly subject to potential climate-related physical risks on the basis of projections and assumptions, for example, provide reliable or comparable information for investors.

2. Scope 3 Emissions.

No existing regulations require the disclosure of Scope 3 emissions. The TCFD framework calls for companies to "[d]isclose Scope 1, Scope 2, and, if appropriate, Scope 3 greenhouse gas (GHG) emissions, and the related risks."[18] In contrast, the Proposed Rules require "total Scope 3 emissions for the fiscal year if those emissions are material, or if it has set a GHG emissions reduction target or goal that includes its Scope 3 emissions," which includes upstream and downstream activities within a company's value chain and the data sources used to calculate such Scope 3 emissions. Williams does not currently disclose Scope 3 emissions with very limited exception where data is available and reliable.

The Scope 3 emissions disclosure requirements depart from established materiality standards by requiring companies to disclose how they reached the conclusion as to whether Scope 3 emissions are material. This will require companies to attempt to gather and analyze a significant amount of third-party data merely to make a materiality assessment, which appears to be required annually. As discussed in more detail below, Williams will have a difficult time identifying who is in its value chain and acquiring data to be able to even assess whether Scope 3 emissions are material. Furthermore, Williams will have a difficult time verifying such data or making estimates where

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[18] Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures (October 2021) at 15, available at https://assets.bbhub.io/company/sites/60/2021/07/2021-TCFD-Implementing_Guidance.pdf.

data is unavailable. Any link third-party GHG emissions data has on a registrant's financials is tenuous at best. Absent financial materiality, these quantitative disclosures offer little value to investors in a financial disclosure.

III. The Proposed Rules mandate certain governance disclosures regardless of the board and management's assessment of climate-related risks.

Existing SEC regulations require companies to "disclose the extent of the board's role in the risk oversight of the registrant, such as how the board administers its oversight function, and the effect that this has on the board's leadership structure."[19] In adopting these requirement, the SEC said that "…disclosure about the board's involvement in the oversight of the risk management process should provide important information to investors about how a company perceives the role of its board and the relationship between the board and senior management in managing the material risks facing the company" clarifying that "[t]his disclosure requirement gives companies the flexibility to describe how the board administers its risk oversight function…"[20] Registrants already discuss governance and management of risks pursuant to this disclosure, which encompasses the disclosure of oversight of risks as they change and evolve. The SEC referenced this disclosure requirement, for example, when discussing governance of cybersecurity, stating: "To the extent cybersecurity risks are material to a company's business, we believe this discussion should include the nature of the board's role in overseeing the management of that risk."[21]

In compliance with the existing SEC reporting regime, Williams provides detailed information about the role of its Board in oversight of risk management. Our disclosures include a detailed Board skills matrix noting the important skills and experience of our directors, including energy transition and environmental regulatory experience; a description of our strategic risk management process; and details around specific Board and Board committee duties related to ESG, which includes climate-related matters.[22] Furthermore, Williams provides detailed disclosures related to its process for evaluating director performance and selecting and nominating directors in line with the Company's strategy.[23] Our Corporate Governance Guidelines, The By-Laws of The Williams Companies, Inc., and the Board committee charters are available on our website to provide further detail regarding the Board's oversight of the Company.

Nevertheless, the SEC's proposed Items 1501 and 1503 mandate companies provide additional details about how a board and a company oversee climate-related risks specifically. Such disclosures include individual employees' roles and the process used to assess and manage climate-related risks, individual expertise in climate-related risks by employees and the board, the scope and frequency with which employees brief the board, how the board specifically considered such climate-related risks as part of its business strategy, risk management, and financial oversight, and the board's oversight of climate-related targets or goals. The required disclosures also mandate including a description of the registrant's process for identifying, assessing and managing climate-related risks, including how a registrant determines the significance of the climate-related risk

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[19] 17 CFR § 229.407(h).

[20] Final Rule: Proxy Disclosure Enhancements, Release Nos. 33-9089; 34-61175; File No. S7-13-09 (Dec. 16, 2009), available at http://www.sec.gov/rules/final/2009/33-9089.pdf.

[21] Commission Statement and Guidance on Public Company Cybersecurity Disclosures, Release Nos. 33-10459; 34-82746 (February 26, 2018), available at https://www.sec.gov/rules/interp/2018/33-10459.pdf.

[22] The Williams Companies, Inc. 2022 Proxy Statement at 11, 21-23.

[23] *Id*. at 8-10, 39.

compared to other risks; how a registrant considers existing or likely regulatory requirements or policies regarding climate-related risks, how a registrant considers shifts in customer preferences, technological changes, or market price changes, and how a registrant determines the materiality of climate-related risks. Such disclosures must include how a registrant decides whether to mitigate, accept, or adapt to a particular risk and how it prioritizes addressing climate-related risks, as well as how climate-related risks are integrated into registrant's overall risk management process, any insurance or financial products used to manage exposure to climate-related risks, and details of any transition plan, including annual updates for achieving the plans targets or goals. Furthermore, the definition of climate-related risk is incredibly broad and encompasses "potential negative impacts of climate-related conditions and events" on "business operations" and "value chains," which are the third-party activities upstream and downstream of registrant's operations.

Some potential challenges in complying with the Proposed Rules include the following:

- Distinguishing climate-related risks from other risks in a reliable manner. For example, determining whether a hurricane is a weather event or a climate-related risk, when new regulation addressing environmental protection becomes a climate-related event, when investing in new technology is prudent business growth versus climate-related risk strategy, or how the impact of a change in consumer preference related to the climate is different from the impact of a change in consumer preference related to any other reason. These distinctions also assume only one intent or motivation exists for various events or conditions, but that is rarely the case. For example, as previously mentioned, multiple trends typically drive natural gas prices simultaneously.

- Defining climate-related expertise and determining what constitutes sufficient climate-related expertise. The SEC provides no guidance on what constitutes climate-related expertise or how a director may obtain such expertise.

Companies have long faced, managed, and disclosed various risks, including changing consumer or investor preferences, emerging technologies, new regulations, and weather-related impacts. The Proposed Rules do not speak to the quality of board oversight or a registrant's risk management practices overall. The SEC provides no analysis regarding whether an individual risk can only be overseen by a dedicated board member with specialized knowledge or that boards are better climate stewards simply based on the frequency with which they discuss climate-related risk. Rather, the Proposed Rules simply result in pressuring a registrant to focus on climate-related risks seemingly above all other risks. Nor does the SEC cite evidence that attempting to draw such distinctions and disclosing specific details regarding the oversight of only the climate-related risks adds material value to an investment or voting decision beyond disclosures of a registrant's overall approach to risk management and a board's oversight of all risk management. Rather, the elevation of one risk faced by a registrant over the myriad of other risks could be misleading, cause false assurance, incorrectly influence priorities, and result in a misallocation of time and money. Further an overemphasis on climate risk can lead to a distorted view of the actual material risks a company may face. Through the Proposed Rules, the SEC effectively invades the board room to make its own declaration regarding the management of climate-related risks when such business judgments and operational decisions may not be in the best interest of shareholders and should be left to the Board elected by shareholders.

IV. The Proposed Rules would subject registrants to liability for disclosures that are estimates or outside of its control.

As previously discussed, and as addressed in greater detail below, the Proposed Rules require disclosures of estimates, GHG emissions calculations, and third-party data. Such data is significantly more difficult to verify through no fault of the registrant making the disclosures. For example, Williams may not be able to verify the consistency or accuracy of data gathered from its value chain or definitively state it was able to identify every company in its value chain. Williams has no choice but to rely on third-party data and no way of judging whether there is a reasonable basis for reporting the third-party data. Disclosures of this third-party data may be unreliable. Yet investors will assume Williams speaks with some level of authority because such statements are filed rather than furnished and subject to certain certifications and controls. Inevitably, when the disclosures are later incorrect, they will result in litigation. Even if the lawsuits are unsuccessful, they will be costly to defend. At a minimum, Williams requests that the SEC consider making any climate-related disclosures, especially GHG emissions disclosures and the disclosure of third-party data, furnished rather than filed and increase the scope and strength of safe harbor provisions to cover third-party data, risk projections, and all GHG emissions disclosures.

V. The Proposed Rules impose impractical and impossible deadlines and stacking climate disclosures on top of the existing Form 10-K financial reporting process is incredibly burdensome.

The timing of the disclosures mandated by the Proposed Rule presents numerous challenges to registrants. The disclosure requirements are intended to take effect for large accelerated filers for the first full fiscal year following the effective date of the final rules. If a final rulemaking becomes effective in December 2022, as expected, large accelerated filers will be required to make disclosures for fiscal year 2023, which for companies with a fiscal year ending December 31, must be filed with the registrant's Form 10-K in March 2024. Given the shortened phase-in period, large accelerated filer registrants are in the position of having to plan for compliance with the Proposed Rules now, including building out an internal reporting architecture and external disclosure controls, even as they are in the process of commenting on the Proposed Rules themselves. Additionally, in the event a final rulemaking becomes effective in late 2022 that differs in any material respect from the Proposed Rules, registrants will have very little time to review the final rules and to make plans for compliance. Finally, as discussed above, implementing the Proposed Rules would require entirely new processes, controls, and accounting systems, which take time to develop and require extensive data gathering from third parties outside the control of the registrant. For these reasons and others, the SEC should extend the phase-in period for all registrants, including large accelerated filers for a minimum of three to five years.

As noted, the Proposed Rules, as drafted, contemplate that required climate-related disclosures will be made in connection with a registrant's Form 10-K, which is to be filed 60 days following the end of a registrant's fiscal year. The SEC seems to think that tacking an entirely new climate reporting regime on top of existing financial statement preparation and annual reporting processes will be simple. Williams believes doing so will be both complex and costly while imposing incredible stress on internal resources which are already under pressure to manage the existing Form 10-K reporting process. Among other issues, Williams believes that compiling emissions data, even for Scope 1 and Scope 2 GHG emissions, and having that data reviewed for third-party attestation within the existing Form 10-K preparation timeframe will be extremely difficult.

Collecting third-party data to make Scope 3 GHG emissions disclosures on this timeline will be nearly impossible. The Proposed Rules do address the timing difficulty by allowing a registrant to estimate its fourth quarter emissions numbers and then "true-up" its annual Scope 3 GHG emissions data later. This does not fully alleviate the problem, however, as it takes substantial time to gather and compile data even for the first three quarters and to have that data submitted for third-party attestation. Additionally, utilizing the estimate and then true-up approach doubles the burden and cost since companies will have to perform the calculation and attestation twice each year. The SEC should point investors to readily available GHG emissions data already collected by the EPA or in Sustainability Reports rather than implementing an entirely new costly and burdensome emissions reporting regime. To the extent the SEC insists on requiring the filing of GHG emissions data, it should allow such data to be submitted in a separate filing rather than imposing the arbitrary time constraints of the Form 10-K onto registrants.

VI. The Proposed Rules impose undue burden and cost on companies.

Both the Administrative Procedure Act[24] and the Securities Act[25] require that the SEC consider the economic implication of any proposed rule on investors, regulated companies, and on the public at large. Additionally, the SEC is obligated to consider the costs of alternatives that would advance its objectives,[26] evaluate the relative costs and benefits of those alternatives,[27] and explain why a departure from the status quo is necessary.[28] Williams believes the cost benefit analysis utilized by the SEC for the Proposed Rules does not adequately consider the cost of compliance to registrants. Even though Williams has a robust program for voluntary reporting of ESG-related information, by its very nature, the inclusion of information in a registrant's filed financial statements differs from voluntary reporting of the same or similar information. Disclosure of information in statements or reports filed with the SEC has a higher level of internal complexity in respect of both information gathering and review, as well as potential liability exposure, all of which translates into a substantially higher associated cost. Adherence with the Proposed Rules, as written, will be extremely costly, not only to registrants but also to third parties who do business with registrants, as well as to the accounting industry as a whole. Overall, Williams anticipates the cost and burden of compliance to be similar to that of implementing the Sarbanes-Oxley Act, which cost several million dollars approximately twenty years ago.

Williams' reports both Scope 1 and Scope 2 GHG emissions along with other ESG information in its Sustainability Report, which is a massive undertaking requiring significant resources in terms of both hours and dollars. Williams employs a full-time, management level director who spends approximately 25% of his time working on and coordinating the preparation of our Sustainability Report and related ESG initiatives. The process to gather data and prepare our Sustainability Report involves a cross-functional ESG Steering Committee comprised of cross-functional leaders and over 60 subject matter experts. We also use a third-party consulting firm, which we annually

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[24] Summary of Executive Order 12866 – Regulatory Planning and Review, 58 FR 51735 (October 4, 1993), available at https://www.epa.gov/laws-regulations/summary-executive-order-12866-regulatory-planning-and-review.

[25] 15 U.S.C. § 78c(f).

[26] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 51 (1983); *Chamber of Commerce*, 412 F.3d at 144.

[27] *DHS v. Regents of Univ. of Calif.*, 140 S. Ct. 1891, 1912-13 (2020).

[28] *American Equity Investment*, 613 F.3d at 177-79 (D.C. Cir. 2010) (vacating SEC rule because the Commission failed to consider the effects of the specific rule it adopted and failed to compare the rule to the status quo baseline of regulation).

pay in excess of a quarter of a million dollars, to assist us in our ESG and Sustainability Report process. Nevertheless, Williams expects the cost associated with ESG-related disclosure to increase substantially should the Proposed Rules go into effect and voluminous amounts of immaterial and unreliable information are required to be included in filed financial statements.

Williams' costs to report Scope 1 and Scope 2 GHG emissions alone will significantly increase under the Proposed Rules. Williams will be unable to leverage its prior efforts to disclose both Scope 1 and 2 GHG emissions because the SEC is requiring emissions disclosures on a different timeline, using different methodologies, and requiring different levels of attestation. Williams will have to rework its prior calculations to fit new methodologies, and then create entirely new systems and controls in an attempt to impose reasonable assurance attestation requirements designed for actual, quantifiable and verifiable financial data to fit the estimates, averages, and calculations used to produce GHG emissions data. Williams anticipates this will require increased staffing, which will significantly exceed the SEC's estimated internal cost estimates. The need for additional staff will be compounded by the timing requirements of the Proposed Rules, as much of Williams' internal accounting staff is already working at capacity in the 60 days following the end of the Company's fiscal year to prepare the disclosures currently required for multiple Form 10-K filings. Currently, the data for our Sustainability Report is often collected and reviewed by different personnel later in the year. Furthermore, Williams is already observing high turnover rates in third-party consultants staffing, leading to cost inefficiencies associated with turnover, and we expect those costs to continue to rise as more companies compete for those resources. Williams also expects that attestation costs for Scope 1 and Scope 2 GHG emissions will be driven higher due to limited qualified service providers and the highly compressed compliance timeline.

Additionally, Williams estimates the cost of voluntarily reporting Scope 3 GHG emissions to be more than $1 million. This estimate includes additional consulting costs, at least one full-time employee in our supply chain department to help track emissions related to goods purchased, at least one full-time environmental specialist dedicated to interpreting guidance applying to our business and developing tools/templates for data management, IT support for data acquisition and management, local environmental team support to inventory local Scope 3 emissions, and execution and steering committee team support with various subject matter experts to review progress, identify gaps, and provide input to and review of reports. This does not include accounting personnel to incorporate Scope 3 emissions reporting into our Form 10-K or any commercial efforts needed to amend contracts or attempt to gather and verify Scope 3 emissions data across our value chain to the extent it can be identified.

Furthermore, Williams estimates implementing the amendments to Regulations S-X would also be in the millions of dollars. To comply with a low threshold requirement, Williams will have to track all absolute values related to the proposed financial metrics simply to determine if the threshold has been met. Given the lack of guidance from the SEC, GAAP, the PCAOB or other industry groups, Williams will have to make a significant amount of judgment calls to apply the Proposed Rules, decreasing its ability to automate reviews and increasing the amount of training and staff necessary.

Williams would also expect a significant increase in core financial statement audit fees due to the additional granular disclosure requirements, the significant expansion of related internal controls related to the new disclosures, and the high degree of judgment and estimation required in developing the disclosed information.

Adherence with the climate-risk requirements, which require future projections, granular asset-level disclosures, and review of risk across a registrant's value chain will also be very costly. Again, compliance will require creation and implementation of new accounting systems and processes, not to mention the undertaking of a massive data gathering and compilation exercise.

Finally, the SEC did not adequately consider the costs Williams will incur from the inundation of requests for GHG emissions data or climate-risk information. While gathering data from our own value chain and preparing to file the Form 10-K, we will also be required to respond to requests from our customers and vendors, which will be time consuming and costly. This will include staffing to assure we are providing accurate information. All companies, whether public or private, would incur these costs.

The SEC estimates the initial annual internal cost for compliance with the Proposed Rules for non-SRC registrants to be $180,000 for the initial year and $150,000 for subsequent years. The SEC estimates the initial annual cost of compliance with the Proposed Rules for non-SRC registrants to be $460,000 in outside professional costs for the initial year and $380,000 for subsequent years. The SEC's estimated annual internal cost is likely insufficient to cover the cost of adding a single qualified full-time employee taking into account the full benefits package offered by Williams. Similarly, Williams' annual professional/consulting costs associated with its existing voluntary ESG reporting efforts, which are much narrower in scope and in associated liability and risk than the disclosure requirements of the Proposed Rules, is nearly half of the SEC's outside professional costs estimate. For many reasons Williams expects disclosure of this information in a filed financial statement to be substantially more costly than its current voluntary reporting. As such, Williams believes the SEC's cost estimates are woefully low.

VII. Scope 3 GHG emissions reporting is unreliable and costly with little benefit to investors.

Perhaps the most troubling aspect of the Proposed Rules to registrants is the required disclosure of Scope 3 GHG emissions. Scope 3 GHG emissions are defined as indirect GHG emissions not otherwise included in Scope 2 GHG emissions, which occur in the upstream and downstream activities of a registrant's value chain. Upstream GHG emissions include GHG emissions attributable to acquired goods and services, capital goods, fuel and energy related activities not included in Scope 1 or 2 GHG emissions, the transportation and distribution of purchased goods, raw materials and other inputs, waste generated in operations, leased assets related principally to purchased or acquired goods or services, and employee business travel and commuting. Downstream GHG emissions include emissions attributable to the use of the registrant's products, transportation, and distribution of sold products, end of life treatment of sold products, leased assets related principally to the sale or disposition of goods or services, and emissions associated with franchising and investments made by the registrant. In essence, Scope 3 GHG emissions are the Scope 1 and Scope 2 GHG emissions of those companies with whom a registrant engages in business transactions. No existing regulations require the disclosure of Scope 3 GHG emissions. Williams does not disclose Scope 3 GHG emissions. In contrast, the Proposed Rules require non-smaller-reporting-company ("SRC") companies to disclose Scope 3 GHG emissions and intensity: (i) if material or (ii) if the company set a GHG emissions reduction target or goal that includes Scope 3 GHG emissions.

While the materiality threshold may provide relief from disclosure of Scope 3 GHG emissions for some registrants, the Proposed Rules suggest that those registrants who determine that their Scope 3 GHG emissions are not material should consider disclosing the basis for their determination of non-materiality. Thus, even registrants not disclosing Scope 3 GHG emissions may be compelled to spend considerable time and expense conducting a full analysis of their Scope 3 GHG emissions to decide with respect to materiality. This suggestion alone is problematic and departs from long-standing principles of materiality-based disclosure. Additionally, the Proposed Rules assume, perhaps incorrectly, that Scope 3 GHG emissions are financially material for all oil and natural gas companies. Rather than relying on a one-size-fits-all assumption applicable to an entire industry sector, the SEC should revise the Proposed Rules so that materiality is evaluated on a case-by-case basis under the current well-established practice.

Beyond the materiality concerns, reporting Scope 3 GHG emissions poses significant practical challenges. The Proposed Rules themselves recognize the inherent difficulty in calculating Scope 3 GHG emissions and the need for registrants to rely on estimates and assumptions to compile Scope 3 GHG emissions data because significant methodological and data integrity concerns exist surrounding this data.

A. Registrants will face significant challenges compiling Scope 3 GHG emissions data from third parties.

Compilation of a registrant's Scope 3 GHG emissions will require a registrant to acquire and rely upon emissions data from other companies' operations that is outside of the registrant's knowledge and control. By definition, Scope 3 GHG emissions are not a registrant's own emissions but rather are the Scope 1 and Scope 2 GHG emissions of other entities positioned upstream or downstream of the registrant in the value chain. Thus, a registrant will be required to obtain its Scope 3 GHG emissions data from its suppliers, vendors, distributors, and customers. The process of simply obtaining this data will be challenging. Williams does business with more than 10,000 suppliers and vendors. Currently Williams has no mechanism to require another company to supply it with GHG emissions data, which would potentially require the renegotiation of thousands of contracts potentially to the detriment of shareholder value, simply in an attempt to secure the third-party information necessary to compile Scope 3 GHG emissions data to meet disclosure requirements. Such a massive renegotiation is both completely unreasonable and impractical. Even to the extent data collection is possible, collecting Scope 3 GHG emissions data from each of the entities with which Williams does business will be costly, time consuming, and unreasonably burdensome.

Companies in the midstream sectors, in particular, will face challenges in calculating their Scope 3 GHG emissions as hydrocarbons are traded in complex markets and market participants often do not know the end use of the products that they supply. Midstream and pipeline companies like Williams routinely provide gathering, processing, and transportation services of hydrocarbon products on behalf of their customers without ever taking title to the hydrocarbon products. It is important to note that the "product" offered by these companies is not hydrocarbons, it is gathering, processing and transportation services. These midstream and pipeline companies utilize a series of contractual arrangements whereby they obtain the right to deliver certain quantities of hydrocarbon products at a given delivery point, typically on behalf of a customer, the owner of the hydrocarbon product. Often one pipeline company's delivery point is the receipt point for another pipeline company's pipeline, where the hydrocarbon product begins another segment of its journey from wellhead to end user by traveling along another pipeline. The hydrocarbon product may pass from

one pipeline company to another multiple times before reaching its final destination, and it is unlikely that any given pipeline company who provided transportation during some segment of the hydrocarbon project's journey would know or have any reason to know what that product's ultimate end use may be.

At the end of their product lifecycle, hydrocarbon products may be combusted as energy sources, but many hydrocarbon products are utilized as lubricants or used in the production of products such as asphalt or blended into feedstock for the manufacture of chemical or plastic products, each use resulting in a drastically different Scope 3 GHG emissions number. Even in the event that the end use of the hydrocarbon product is known, Scope 3 GHG emissions numbers would still vary greatly based upon efficiency of the downstream process and any emissions control, destruction, or sequestration devices utilized during that process.

B. Registrants will face significant challenges verifying Scope 3 GHG emissions data.

Verifying the accuracy of GHG emissions data collected from thousands of third-party entities, many of whom may not be publicly traded companies and may not have appropriate control structures in place to assure data quality, will be impossible. It is unclear how Scope 3 GHG emissions, compiled from data provided by a such a wide variety of different third-party entities employing various calculation methodologies and implementing varying degrees of control, would have any meaningful level of data integrity or accuracy.

Additionally, the Proposed Rules do not prescribe a consistent standard for calculating and reporting GHG emissions data by registrants. Rather than defining methodologies for calculating GHG emissions to be used by all registrants, the Proposed Rules require the registrant to "describe the methodology, significant inputs, and significant assumptions used to calculate GHG emissions." Thus investors will not only face GHG emissions data calculated using various methodologies or standards, they will also be inundated with lengthy descriptions of the various methodologies and assumptions used. We do not understand how this enhances comparability.

In addition to not imposing a consistent methodology for calculating GHG emissions, the requirements of the Proposed Rules are in certain key respects not consistent with existing GHG emissions reporting regulations, such as those imposed on certain regulated companies by the EPA, and in many respects do not align with the methodologies proscribed by those reporting regimes. Specifically, although the SEC purports that the GHG emissions reporting requirements of the Proposed Rules are largely based on the GHG Protocol, the Proposed Rules require that a registrant calculate its emissions by applying organizational boundaries consistent with the consolidated financial statement basis. This conflicts with reporting on a facility basis to the EPA and is not common practice among companies reporting GHG emissions voluntarily. Particularly, in the natural gas industry, companies commonly report GHG emissions on an operational or equity share basis, both of which differ from the structure outlined in the Proposed Rules. This lack of standardization will result in potentially confusing reports by the same registrant and will require companies to shift to different metrics for company-wide reporting and obtain data from partners using different boundaries and may require that certain registrants restate GHG emissions targets, baselines, and performance indicators. These impacts will likely result in increased investor confusion rather than more standardized disclosure, as well as the increased administrative and cost burden imposed on registrants.

C. The Scope 3 GHG emissions data will lead to problematic overcounting of emissions.

Even if companies can overcome data compilation and integrity challenges, absent more clearly defined standards, reporting of Scope 3 GHG emissions is likely to lead to widespread overcounting. Indeed, required disclosure of Scope 3 GHG emissions inherently involves the double or multiple counting of GHG emissions. As noted above, Scope 3 GHG emissions are, by definition, not a registrant's own GHG emissions but rather are the Scope 1 and Scope 2 GHG emissions of other companies. Thus, for example, with respect to a unit of natural gas combusted to generate electrical power, the Proposed Rules would potentially require disclosure of the same GHG emissions by multiple entities, including the gas producer operating the natural gas well, the midstream company(ies) who gather, process and fractionate the natural gas, the pipeline company(ies) transporting the natural gas to the power plant, the company operating the power plant, the local electrical power distribution company, and the company who is the end user of the electrical power produced.

Calculation of Scope 3 GHG emissions, in essence, captures the GHG emissions of an entire segment of the economy. While such GHG emissions data aggregated across the economy as a whole, could it be accurately calculated, may be interesting and may be relevant to a broader understanding of climate change and its associated societal risks, it is unclear how this data is related to a specific registrant's financial performance or to the reasonable investor's investment or voting decisions. Scope 3 GHG emissions data reported by an individual registrant is not a reliable indicator of the registrant's impact on climate change as the reporting of such GHG emissions does not indicate whether global emissions are being reduced or increased. This is particularly relevant with respect to companies operating in the natural gas sector. As noted above, an increased demand for natural gas tends to indicate the displacement of other fossil fuels generally associated with higher emissions, such as coal. However, this increased demand often results in increased Scope 3 GHG emissions of individual companies in the natural gas sector even though it results in a net emissions reduction across the economy as a whole.

D. Requiring Scope 3 GHG emissions disclosures will have unintended consequences, burdens, and chilling effects.

Concerningly, the Scope 3 GHG emissions disclosure requirement of the Proposed Rules requires a registrant to rely on the subjective and potentially inaccurate GHG emissions data provided to it by potentially private third-party entities and to incorporate that data into a filing with respect to which the registrant subjects itself to potential liability. While the Proposed Rules do provide a safe harbor applicable to disclosure of Scope 3 GHG emissions data such that these types of disclosures would not be deemed fraudulent unless made or reaffirmed without a reasonable basis or disclosed other than in good faith, this limited protection is insufficient. The Proposed Rules do not define these terms and offer no guidance with respect to how companies should form a reasonable basis for disclosure of, or establish a good faith belief in, unaudited Scope 3 GHG emissions data received from a non-SEC regulated third party entity. Additionally, the safe harbor insulates a registrant from liability only for fraud-based claims and does not adequately protect registrants from other types of reporting violations or charges brought by the SEC or from liability associated with claims brought by shareholders or by attorneys general.

In addition to its liability burden on public companies, the Scope 3 GHG emissions disclosure requirement of the Proposed Rules is likely to adversely impact even private companies who are not traditionally subject to SEC regulation. As discussed above, Scope 3 GHG emissions data must be obtained by a registrant from its vendors, suppliers, customers and distributors, both upstream and downstream in the value chain. As previously discussed, this imposes upon private companies who do business with public companies the costly and onerous burden of calculating GHG emissions data to provide to the public companies in the value chain in order to enable those public companies to comply with the Proposed Rules' Scope 3 GHG emissions disclosure requirements. Further, the Proposed Rules suggest that registrants may mitigate their Scope 3 GHG emissions data collection requirements or impacts by choosing different vendors, suppliers and customers and/or helping their upstream and downstream vendors, suppliers, customers or distributors reduce their emissions. The not subtle suggestion is that registrants terminate relationships with private companies who do not, for whatever reason, provide such data. Accordingly, even private companies not subject to the disclosure requirements are likely to be adversely impacted in multiple ways by the Proposed Rules.

Furthermore, given the level of subjectivity and the numerous issues related to accuracy and data integrity, required disclosure of Scope 3 GHG emissions is also unlikely to further the SEC's goal of producing consistent and comparable climate-related disclosures. The Proposed Rules require disclosure of Scope 3 GHG emissions information that is inherently difficult to quantify with any level of certainty. Disclosures of this nature are for the most part unprecedented and will involve establishing extensive new accounting, verification, and attestation methods in a short period of time. This will likely result in the necessity that registrants develop their own solutions to meet the disclosure requirements in a timely manner, resulting in disclosures that are inconsistent, confusing, and potentially misleading and that will not allow for an apples-to-apples comparison by investors. Additionally, the Proposed Rules, as currently written, are likely to have the unintended chilling effect of preventing companies from setting GHG emissions reduction goals that include Scope 3 GHG emissions to avoid triggering onerous disclosure requirements.

For all of the reasons discussed above, Williams urges the SEC to decline to finalize a rulemaking requiring disclosure of Scope 3 GHG emissions.

VIII. The Proposed Rules exceed the SEC's scope of authority.

The SEC "cannot…act with the force of law without delegated authority from Congress."[29] The Securities Act of 1933 and the Securities Exchange Act of 1934 authorize the SEC to promulgate rules requiring disclosure of information that it believes is "necessary or appropriate in the public interest or for the protection of investors."[30] To determine whether an action is necessary or

[29] *New York Stock Exch. LLC v. SEC*, 962 F.3d 541, 554 (D.C. Cir. 2020).

[30] *See e.g.*, Proposed Rules at 7 (citing 15 U.S.C. §§ 77g(a)(1)("Any such registration statement shall contain such other information, and be accompanies by such other documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors"); 78l(b)(1)(stating a registrant may apply to register a security on a national security exchange by filing an application containing such information "as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors…"); 78l(l)("It shall be unlawful for an issuer, any class of whose securities is registered pursuant to this section or would be required to be so registered … to issuer, either originally or upon transfer, any of such securities in a form or with a format which contravenes such rules and regulations as the Commission may prescribe as necessary or appropriate for the prompt and accurate clearance and settlement of transactions in securities."); 78m(a) (stating every issuer of a security registered pursuant to section 78l shall file

appropriate in the public interest, Congress has directed the SEC to also consider "whether the action will promote efficiency, competition, and capital formation."[31] Williams agrees with the many commentators who note the SEC's Proposed Rules exceed the SEC's delegated authority from Congress. Accordingly, we believe the SEC's Proposed Rules should be entirely withdrawn and the matter of climate disclosures should be addressed by Congress.

IX. The Proposed Rules potentially compel speech from companies in violation of the First Amendment.

Williams agrees with the commentators who conclude that departing from the well-established materiality standard could run afoul of recent First Amendment precedent applying strict scrutiny to content-based laws compelling speech.[32] Although requiring limited disclosure of accurate and material information impacting the financial position of a corporate registrant meets the strict scrutiny standard applied by the Supreme Court,[33] requiring the disclosure of information that is not material to financial performance, that may not be accurate, and that may be subject to honest debate or which may be highly controversial, likely does not satisfy this standard,[34] and may not even satisfy the less restrictive application of intermediate scrutiny,[35] under which the law compelling speech must be "narrowly tailored to serve a significant government interest."[36]

X. Conclusion.

In summary, Williams believes that, in addition to imposing massive costs and unreasonably burdensome obligations on registrants, the Proposed Rules are overly prescriptive and do not allow for climate-related metrics and information to continue to evolve and grow. While our preference is that the Proposed Rules be withdrawn by the SEC and the matter left to Congress, at a minimum, Williams requests the SEC consider the following:

- Apply traditional concepts of materiality to all new climate-related disclosures required in securities filings.

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with the Commission "in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security"); and § 78o (referencing rules the Commission may enact as necessary and appropriate in the public interest and for the protection of investors in regulations for the registration and regulation of brokers and dealers)).

[31] *See id.* (citing 15 U.S.C. § 77b(b)("Whenever pursuant to this subchapter the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate int eh public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital information."); 15 U.S.C. § 78c(f)("Whenever pursuant to this chapter the Commission is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.").

[32] *See Nat'l Inst. Of Family and Life Advocates v. Becerra*, 138 S.Ct. 2361, 2372-74 (2018); *Barr v. Am. Ass'n of Political Consultants, Inc*, 140 S.Ct. 2335, 2347 (2020); *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

[33] *Barr v. American Ass'n of Political Consultants, Inc.*, 140 S. Ct. 2335, 2346 (2020); *Reed v. Town of Gilbert*, 576 U.S. 155, 159 (2015).

[34] *Id.*

[35] *National Ass'n. of Mfrs.*, 748 F.3d 359, 371-2 (D.C. Cir. 2014) (invalidating SEC's conflict minerals rule under the intermediate scrutiny standard).

[36] *Id.*

- Allow registrants to furnish rather than file Scope 1 and 2 GHG emissions data, if material, utilizing the same methodologies, timelines and verification processes utilized by the EPA (i.e., operational control basis with no limited or reasonable assurance) or that are common in the midstream energy industry, including eliminating the requirements for attestation of Scope 1 and 2 GHG emissions.

- Eliminate the requirements for Scope 3 GHG emissions disclosure and the financial impact disclosures pursuant to Regulation S-X.

- Eliminate any requirement for registrants to assess climate-related risks of value chains.

- Expand safe harbors to include all speculative data, including third-party data, risk projections, and all GHG emissions reporting.

- Divorce climate-related disclosure requirements from the Form 10-K disclosure timeline.

- Extend the phase-in for any new rules given the scope of the proposed changes.

- Providing that any new reporting obligations should begin with periods after the effective date of the final rule.

Williams appreciates the opportunity to share its thoughts and information with the SEC regarding the Proposed Rules.

Respectfully,

T. Lane Wilson
Sr. Vice President and General Counsel