August 16, 2022

VIA ELECTRONIC FILING (https://www.sec.gov/rules/submitcomments.htm)

Secretary Vanessa A. Countryman
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549–1090

Re: File No. S7-17-22.
Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices, Proposed rule, 87 Fed. Reg. 36,654 (June 17, 2022)

Dear Secretary Countryman:

The Coalition for Renewable Natural Gas ("RNG Coalition") represents the renewable natural gas ("RNG") industry in North America. We are a non-profit association of companies and organizations dedicated to the advancement of RNG as a clean, green, alternative, and domestic energy and fuel resource. RNG Coalition's diverse membership includes each sector of the RNG value chain: waste collection, waste management & recycling companies, renewable energy/gas developers, engineers, banks, financiers, investors, gas/power marketers, gas/power transporters, manufacturers, technology & service providers, environmental advocates, research organizations, organized labor, law firms, consultants, non-profits, airports, municipalities, universities, utilities, and individual ratepayers.

We appreciate the opportunity to submit comments on the proposed rule, "Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices" ("Proposed Rule"). The Securities and Exchange Commission ("SEC") has indicated that the Proposed Rule is "designed to create a consistent, comparable, and decision-useful regulatory framework for ESG advisory services and investment companies to inform and protect investors while facilitating further innovation in this evolving area of the asset management industry." 87 Fed. Reg. at 36,654. Among its many benefits, RNG helps reduce and avoid greenhouse gas ("GHG") emissions, and it is (or should be) a key component of decarbonization strategies in both voluntary and mandatory programs to address GHG emissions across jurisdictions and across various economic sectors. RNG is also an important waste management tool, provides substantial local pollution and economic benefits to surrounding communities. Because of RNG's significant benefits, RNG Coalition has a substantial interest in ensuring that disclosures regarding environmental, social, and governance ("ESG") investment practices are clear, credible, consistent, and transparent.

The Proposed Rule creates a framework for disclosures about a fund or adviser's ESG-related strategies. It would also enhance the quantitative data for environmentally focused fund strategies, including GHG emissions reporting. RNG Coalition generally supports efforts to promote and standardize reporting of environmental considerations when making investments.

About RNG

RNG is biogas-derived fuel that is cleaned and conditioned to achieve quality standards necessary to blend with or substitute for geologic natural gas. Every community in America produces waste. As that waste breaks down, it emits methane, which is a naturally occurring, but potent and harmful GHG. RNG facilities capture this methane from existing food waste, animal manure, wastewater sludge and garbage, and redirect it away from the environment, repurposing it as a clean, green energy source. As such, RNG can produce carbon-negative results when fueling on-road vehicles like short- and long-haul trucks, transit buses, and refuse and recycling collection vehicles.[1] During power outages, RNG can be tapped to provide reliable, sustainable energy. This dependability is also why it is used to power essential services for food storage, airports, universities, hospitals, and other important facilities.

RNG is used in the same infrastructure and appliances as geologic natural gas, including in transportation, industrial, heating and electricity applications. According to the U.S. Environmental Protection Agency's ("EPA") GHG Inventory, the largest source of carbon dioxide ("CO_2") in the United States, and of overall GHG emissions, is fossil fuel combustion primarily from transportation and power generation.[2] RNG is key to reducing these emissions and meeting this Administration's climate change goals. As a significant bonus, RNG also reduces the impacts of organic wastes. Solid waste from human activity is expected to grow nearly 70 percent by 2050. RNG provides a near-term solution for effectively managing this colossal waste issue and getting us on the path to implementing a source of clean, reliable fuel. Regulators and companies have recognized these benefits, making RNG an important component of climate change strategies.

RNG is currently sold in the transportation fuel market as renewable compressed natural gas ("CNG") and liquefied natural gas ("LNG"). In 2021, 64 percent of all on-road fuel used in natural gas vehicles was RNG, providing substantial environmental benefits, including GHG emissions reductions.[3] Technological and commercial maturity of medium- and heavy-duty natural gas vehicles have encouraged adoption of natural gas for commercial vehicle fleets, with reported reductions in the total cost of ownership through fuel cost savings and reduced maintenance, in addition to substantial emission reductions.[4] RNG availability enhances the economic value of converting trucking and municipal fleets from diesel to natural gas, which in

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[1] Decomposition of wastes in landfills was identified as a major source of methane emissions in the United States. *See* EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2020*, at ES-7 (2022), *available at* https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2020.

[2] *See* EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2020*, at ES-7 (2022), *available at* https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2020.

[3] NGVAmerica and RNG Coalition, *Decarbonize Transportation with Renewable Natural Gas*, May 2022, *available at* https://ngvamerica.org/wp-content/uploads/2022/05/NGV-RNG-Decarbonize-2022-5.2.22.pdf.

[4] Bates White Economic Consulting, *Renewable Natural Gas: Transportation Demand*, at 4 (2022), *available at* https://static1.squarespace.com/static/53a09c47e4b050b5ad5bf4f5/t/626c52a437caa619cddf533b/1651266213212/Bates+White+RNG+Transpo+Demand+Study+Feb+2022+plus+April+2022+Supplement.pdf.

turn supports investments in supply infrastructure, increasing the value and viability of further conversions.[5]

Indeed, RNG makes up over 95 percent of our nation's cellulosic biofuel under the Renewable Fuel Standard ("RFS") program. In establishing the RFS program, Congress, among other things, sought to reduce GHG emissions from the transportation fuel sector by moving away from petroleum based fuels and toward renewable fuels. It did so by imposing a lifecycle GHG emissions reduction requirement to be eligible under the program and establishing "advanced biofuel" categories. The cellulosic biofuel category requires EPA to find the fuel provides at least 60 percent reductions in lifecycle GHG emissions compared to the applicable petroleum baseline.

States, including California, Oregon, and Washington, have also implemented low carbon fuel standard programs that are driving investment in RNG. Using California Air Resources Board data, the average carbon intensity value of RNG in its Low Carbon Fuel Standard program was carbon negative at -44.41 gCO_2e/MJ for calendar year 2021. Based on this data, RNG use in transportation fuel displaced 3.8 million metric tons of CO_2 equivalent in 2021, which is equivalent to removing CO_2 emissions from more than 427 million gallons of gasoline consumed.

RNG can be used to produce renewable hydrogen and other renewable fuels, such as sustainable jet fuel. Renewable hydrogen could significantly reduce carbon emissions from the heavy-duty transportation sector where electrification is especially difficult or impossible. When renewable hydrogen production is paired with carbon capture and sequestration, the RNG process is ultimately carbon negative. RNG deployed as renewable hydrogen provides another avenue for zero-carbon and carbon-negative fuel in the energy, transportation, and industrial sectors.

RNG has been a clean source of renewable energy for decades but is growing in importance and popularity today because the urgent need to combat climate change and deal with the emissions of society's growing waste streams. RNG is a tangible and immediately available solution predicated on improving waste management and reducing methane emissions. Governments and companies are embracing RNG because it provides a real, sustainable path to decarbonization. Because the emissions from waste are not optional – but rather a naturally occurring source of GHG that we must address – RNG is an essential part of the energy future, providing meaningful opportunity for companies to decarbonize their operations and supply chains. Nevertheless, the real and tangible environmental benefits of RNG will only help the country and this Administration reach its climate goals if those benefits are counted in a clear, credible, consistent, and transparent framework.

Comments on SEC's Proposal

The SEC is proposing to require additional specific disclosure requirements regarding ESG strategies to investors in fund registration statements, the management discussion of fund performance in fund annual reports, and adviser brochures. 87 Fed. Reg. at 36,659. These changes would allow investors to identify funds more readily and advisers that do or do not consider ESG factors, differentiate how they consider ESG factors, and help inform their analysis of whether they should invest. *Id.* The Proposed Rule would establish minimum disclosure requirements for

[5] *Id.* at 3.

any fund that markets itself as an "ESG-Focused Fund"[6] and "Integration Funds"[7] that consider ESG factors as one of many factors in investment selections. *Id.* In particular, the SEC is proposing a requirement for ESG-Focused Funds that consider GHG emissions to include disclosure of two GHG emissions metrics for the portfolio in such funds' annual reports. *Id.* SEC believes the proposed required information would provide quantitative metrics related to climate for investors focused on climate risk while also providing verifiable data from which to evaluate environmental claims, would benefit those investors that have made net zero or similar commitments by helping them determine whether a particular investment is consistent with the commitment they have made, and would help prevent exaggerated claims. *Id.*

RNG Coalition Supports Ensuring Transparency and Consistency in Reporting Strategies on ESG Investments, Including How it Considers GHG Emissions.

SEC proposes to require a fund engaging in ESG investing to provide additional information about the fund's implementation of ESG factors in the fund's principal investment strategies. 87 Fed. Reg. at 36,659. Under the Proposed Rule, the level of detail required would depend on the extent to which a fund considers ESG factors in its investment process. For example, an ESG-Focused Fund, which would include an ESG Impact Fund, would be required to provide specific disclosure about how the fund focuses on ESG factors in its investment process. The Proposed Rule would also include a specific requirement for funds that consider GHG emissions to provide more detailed information in the fund's statutory prospectus or later in a closed-end fund's prospectus. *Id*. at 36,661. RNG Coalition supports efforts to provide investors with "clear and comparable information about how a fund considers ESG factors." *Id.* at 36,659. While SEC indicates that the methodology for considering GHG emissions has been converging, there are still various ways to account for GHG emissions, and it would provide a benefit to the public to see how investment funds account for these emissions.

With respect to GHG emissions, the Proposed Rule proposes to require an ESG-Focused Fund that considers environmental factors as part of its investment strategy to disclose the carbon footprint[8] and the weighted average carbon intensity ("WACI")[9] of the fund's portfolio. 87 Fed. Reg. at 36,676. This requirement would not apply if the fund affirmatively states that it does not consider issuers' GHG emissions as part of its investment strategy. *Id.* SEC indicates that these

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[6] The Proposed Rule would define "Integration Fund" as a "fund that considers one or more ESG factors along with other, non-ESG factors in its investment decisions, but those ESG factors are generally no more significant than other factors in the investment selection process, such that ESG factors may not be determinative in deciding to include or exclude any particular investment in the portfolio." 87 Fed. Reg. at 36,660.

[7] The Proposed Rule would define an "ESG-Focused Fund" as a "find that focuses on one or more ESG factors by using them as a significant or main consideration (1) in selecting investments or (2) in its engagement strategy with the companies in which it invests." 87 Fed. Reg. at 36,662. An ESG-Focused Fund includes "(i) any fund that has a name including terms indicating that the fund's investment decisions incorporate one or more ESG factors; and (ii) any fund whose advertisements or sales literature indicate that the fund's investment decisions incorporate one or more ESG factors by using them as a significant or main consideration in selecting investments." *Id.* An "Impact Fund" is "an ESG-Focused Fund that seeks to achieve a specific ESG impact or impacts." *Id.*

[8] "Carbon footprint is an economic measure of the amount of absolute GHG emissions that a fund portfolio finances, through both equity ownership and debt investments, normalized by the size of the fund." 87 Fed. Reg. at 36,678.

[9] "WACI is the fund's exposure to carbon-intensive companies, expressed in tons of CO_2e per million dollars of the portfolio company's total revenue." 87 Fed. Reg. at 36,678.

measures together "would provide investors in environmentally focused funds with a comprehensive view of the GHG emissions associated with the fund's investments, both in terms of the footprint or scale of the fund's financed emissions and in terms of the portfolio's exposure to carbon-intensive companies." *Id.* at 36,679. RNG Coalition generally supports providing more transparency and consistency in reporting, so long as it is consistent with other disclosure requirements and provides companies with flexibility in accounting for their GHG emissions, including recognizing that biogenic emissions are carbon neutral and reducing Scope 1 and/or Scope 2 emissions based on avoided GHG emissions and credits.

The Proposed Rule indicates that the carbon footprint and WACI metrics are generally aligned with the recommendations from the Task Force on Climate–Related Financial Disclosures and Partnership for Carbon Accounting Financials frameworks and based on emission data consistent with those defined by the GHG Protocol framework. 87 Fed. Reg. at 36,676. SEC indicates that this Proposed Rule would complement the climate disclosures that SEC previously proposed in the Enhancement and Standardization of Climate-Related Disclosures for Investors proposal, 87 Fed. Reg. 21,334 (Apr. 11, 2022) (referred to hereinafter as "Climate Disclosure Proposed Rule"). *Id.* at 36,677. SEC states that these "disclosures would provide investors with consistent, comparable, and decision-useful information about their portfolio of investments that are relevant to their investment decisions." *Id.* RNG Coalition generally supports the Proposed Rule tracking the Climate Disclosure Proposed Rule, subject to the comments RNG Coalition submitted on that proposal, which are attached to these comments, and as discussed below.

In particular, the Proposed Rule proposes to include definitions that are consistent with the GHG Protocol and PCAF standards, including definitions for Scope 1, Scope 2, and Scope 3 emissions. As noted in its comments on the Climate Disclosure Proposed Rule, RNG Coalition does not necessarily oppose the concept of "scopes," and several of its members may voluntarily use the GHG Protocol.[10] We note that, in the Climate Disclosure Proposed Rule the SEC declined to require a specific protocol for GHG emissions disclosures, such as the GHG Protocol. 87 Fed. Reg. at 21,449. The SEC noted significant drawbacks with such an approach, including creating inconsistencies with how companies report organizational boundaries elsewhere in their financial statements, reducing innovation in driving the most appropriate forms of disclosure, and potentially creating problems in the future if the protocol changes. *Id.* Most important, the SEC acknowledged that such an approach would "limit flexibility for registrants and thus reduce their ability to report emissions in a manner that is tailored to their specific circumstances." *Id.* We agreed with SEC about these concerns and opposed requiring a specific methodology (such as GHG protocol) for calculating GHG emissions.

The Proposed Rule would base the carbon footprint and WACI metrics on Scope 1 and Scope 2 emissions associated with the fund's portfolio. 87 Fed. Reg. at 36,678. The Proposed Rule proposes a data hierarchy for sources that funds would be required to use in obtaining portfolio company GHG emissions data, such as using a portfolio company's most recent regulatory report when calculating carbon footprint and WACI, then publicly available information, and, if neither

[10] The Proposed Rule would require reporting of Scope 3 emissions of their portfolio companies separate from Scope 1 and Scope 2 emissions. 87 Fed. Reg. at 36,682. To the extent Scope 3 emissions data is required, it should be carefully bounded. Scope 3 emissions would be broadly defined under the Climate Disclosure Proposed Rule to include the company's entire value chain. The Proposed Rule would use similar definitions.

are available, a good faith estimate. *Id*. at 36,681. SEC is not proposing to require that funds use a particular estimation method, but the Proposed Rule would require (1) disclosing the percentage of the aggregate portfolio GHG emissions that was calculated using the fund's good faith estimation process and (2) providing a brief explanation of the process it used to calculate its good faith estimates of its portfolio company GHG emissions, including the data sources the fund relied on to generate these estimates. *Id.* The Proposed Rule would also require a fund to provide additional information regarding any assumptions and methodologies the fund applied in calculating the portfolio's GHG emissions, and any limitations associated with the fund's methodologies and assumptions, as well as explanations of any good faith estimates of GHG emissions the fund was required to make. *Id.* at 36,682. This approach would appear to recognize the flexibility provided to companies in how they disclose their GHG emissions under the Climate Disclosure Proposed Rule, which RNG Coalition supported, while providing investors with sufficient information to assess and compare the different portfolios. RNG Coalition notes that States and other regulatory bodies may have GHG-related disclosure requirements and, while SEC does allow consideration of publicly available information, such disclosures may be more reliable than a company's sustainability report.

The Proposed Rule would only require reporting of Scope 3 emissions if they are reported by the portfolio companies. 87 Fed. Reg. at 36,682. This again would seem to account for the flexibility provided to companies in disclosing their GHG emissions under the Climate Disclosure Proposed Rule. We support this approach as transparency, not one specific methodology, should be the goal.

For example, RNG promotes the capture of methane from organic wastes, which otherwise would be vented, flared, or enter into the atmosphere unabated, which has significant implications for addressing climate change. Accounting methodologies often consider biogenic emissions as carbon neutral, which reduces a company's Scope 1 emissions (or possibly Scope 2 if using RNG for electricity generation). While we believe this is the best approach based on the best available science for RNG, some have argued against such accounting for certain biogenic emissions, despite the fact that it has been generally accepted and has long been in use. It does not appear that the SEC has done an independent assessment of these methodologies, noting only that the GHG Protocol is widely used. Nor is the SEC in a better position to identify proper accounting methodologies than these other regulators or programs. As such, the SEC should not tie the hands of companies by requiring a particular methodology.

As another example, methodologies currently in use differ as to how to calculate avoided emissions. As with biogenic emissions, avoided emissions are accounted for in some programs against total emissions (i.e., Scope 1), which RNG Coalition supports. For example, when assessing a company's carbon intensity score, the California Air Resources Board accounts for avoided methane emissions from diversion of wastes to anaerobic digestors. This is a key benefit of RNG. On the other hand, some may report it as offsets or part of Scope 3, and, in such cases, companies should be allowed to report them, and funds should be allowed to consider them. How companies utilize RNG may depend on the economic sector and the specifics of the company's operations. As such, SEC should recognize this flexibility for funds reporting the carbon intensity of their portfolios, rather than prescribe specific methodologies because of potential disagreements around reporting of these RNG benefits. SEC also notes that the Proposed Rule "would provide investors with an effective depiction of the GHG emissions associated with fund's investments

and provide a reasonable basis for comparison among funds, notwithstanding that the GHG information underlying the disclosures may not be calculated using identical methods and assumptions." 87 Fed. Reg. at 36,681.

However, for both the carbon footprint and WACI measures, the Proposed Rule would not permit a fund to reduce the GHG emissions associated with a portfolio company as a result of the company's use of purchased or generated carbon offsets. 87 Fed. Reg. at 36,679. SEC states that "disclosing GHG emissions data without giving effect to any purchased or generated carbon offsets is appropriate, not only because such a measure would provide investors with important information about the magnitude of climate-related risk posed by a fund portfolio's financed GHG emissions, but also because the value of offsets may change due to restrictions imposed by regulation or market conditions." *Id.* SEC further notes that the fund could still disclose such information separately "because funds are not restricted from providing additional information" than what is required. *Id.* This approach appears inconsistent with the SEC's Climate Disclosure Proposed Rule, which found "[u]nderstanding the role that carbon offsets or RECs [(renewable energy credits)] play in a registrant's climate-related business strategy can help investors gain useful information about the registrant's strategy, including the potential risks and financial impacts." 87 Fed. Reg. at 21,355. Moreover, RNG Coalition supported allowing consideration of renewable energy credits (e.g., to acknowledge and account for renewable thermal credits, Renewable Identification Numbers or RINs, Low Carbon Fuel Standard or LCFS credits, etc.) to qualify toward Scope 1 emission reductions as part of the assessment of the carbon footprint. At a minimum, requiring reporting of carbon offsets could also provide investors with more information as to the GHG emissions portfolio of a fund.

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RNG Coalition appreciate the opportunity to submit these comments on the SEC's Proposed Rule. Thank you for your consideration. If you have any questions on these comments, please do not hesitate to contact us.

Respectfully submitted,

David Cox
General Counsel
Coalition for Renewable Natural Gas