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Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F St. NE
Washington, DC 20549-10901

RE: The Enhancement and Standardization of Climate-Related Disclosures for Investors (File Number S7-10-22) (Questions 2, 24, 101, 168, 170, & 173)

Dear Ms. Countryman,

Thank you for the opportunity to respond to the SEC's proposed rule on climate-related disclosures.[1] We welcome the proposed rule's provisions and believe it will greatly improve the consistency, comparability, and reliability of information available to investors.

Our comments today focus on the proposed rule's provisions for carbon offsets, and on the use of offsets in corporate climate targets and strategy. For context, CarbonPlan is a nonprofit research organization dedicated to improving the transparency and scientific integrity of carbon removal and climate solutions through open data and tools. Our comments are informed by extensive research on carbon markets,[2] including the use of carbon offsets in corporate climate commitments and analysis of existing market disclosure.[3]

We are very encouraged to see the SEC recognize that carbon offsets pose material risks to registrants and investors. In addition to emphasizing how the rule will improve the quality and quantity of information available to investors who bear these risks, we also offer several recommendations for clarifying and strengthening the rule based on existing market practices.

Before addressing the SEC's specific questions, we outline three key reasons why offset-related disclosures are important as a general matter. First, a registrant's use of carbon

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[1] Securities and Exchange Commission, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Federal Register 21,334 (Apr. 11, 2022).

[2] Grayson Badgley et al., Systematic over-crediting in California's forest carbon offsets program, *Global Change Biology* 28: 1433-45 (2022); CarbonPlan, Soil carbon protocols database (2021).

[3] Sadie Frank and Danny Cullenward, Climate-related financial risk and corporate net-zero commitments, CarbonPlan (Nov. 1, 2021); Sadie Frank et al., Why carbon offset disclosure matters, CarbonPlan (Feb. 8, 2022).

offsets is material to a wide variety of transition-risk-mitigation strategies. Second, substantial market risks exist for both suppliers of carbon offsets and for companies purchasing offsets to achieve their own strategic goals. And third, existing disclosure in today's offset markets does not provide investors with the information they need to adequately assess and price risk, which illustrates the need for consistent, mandatory disclosures.

Corporate transition-risk-mitigation strategies often rely heavily on the use of carbon offsets. While some companies choose to not purchase carbon offsets, it is often cheaper for a company to buy offsets than to invest in capital expenditures to directly reduce its own greenhouse gas emissions. As a result, many corporations emphasize the use of carbon offsets as a transition-risk-mitigation strategy.

Not only does a company's preferred quantity of carbon offsets matter, but the type of offset credit is relevant to investors as well. Many companies are pledging net-zero climate targets that require them to balance any ongoing climate emissions with carbon removal, a distinct type of climate service that can be delivered by certain carbon offset credits.[4] As net-zero targets grow in popularity,[5] investors will need to distinguish a registrant's reliance on carbon removal services from any use of carbon offset credits that claim to reduce or avoid emissions.

While carbon offsets are often a key part of a company's plan for reducing transition-risk exposure, the use of offsets also presents material transition risks to investors and registrants. Today's offsets markets are characterized by deep uncertainty in both long-term viability and price outlook. Depending on the trajectory of regulation and voluntary market standards, the future of carbon offsets markets could vary substantially.[6] Because carbon removal tends to be more expensive and faces greater supply constraints,[7] a market that transitions to carbon removal — through new regulation or stricter voluntary standards for net-zero targets — could result in a significant increase in prices and potential supply bottlenecks. Should this happen, companies with climate strategies that assume cheap and plentiful offsets will find themselves exposed to elevated market prices, and thus, elevated transition risk.[8]

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[4] *See*, *e.g.*, Science-Based Targets initiative, SBTi Corporate Net-Zero Standard (Oct. 2021); Oxford Net Zero, Principles for Making a Net Zero Commitment. Despite common misperceptions, not all carbon offsets are the same. A carbon offset credit represents a distinct type of climate claim: avoided emissions, reduced emissions, or carbon removal. For example, projects that avoid burning fossil fuels or harvesting standing forests for commercial timber generate avoided emissions credits. In contrast, growing forests or deploying direct air capture technologies results in carbon removal.

[5] Oxford Net Zero, Net Zero Tracker (see table "Companies").

[6] Nathaniel Bullard, Carbon Offsets Trading Could Go Two Very Different Ways, *Bloomberg Green* (Jan. 21, 2022).

[7] Lucas Joppa et al., Microsoft's million-tonne CO_2-removal purchase — lessons for net zero, *Nature* 597: 629-32 (2021).

[8] Delta Air Lines, for example, indicates in a 2021 CDP filing that it treats the cost of carbon offsets as one internal measure of the cost of carbon. Delta Air Lines' annual CDP disclosures can be accessed

The same market and regulatory risks also apply to the supply side of the offsets market. Many companies are currently entering the carbon offsets market based on the substantial opportunities that these markets may provide to them as credit sellers. Take, for example, a company like Weyerhaeuser. In a recent 10-K filing, the company discussed its recent launch of a “natural climate solutions business” through which the company intends to help others meet their greenhouse gas emission reduction goals as a supplier of forest carbon offsets.[9] Weyerhaeuser identified this effort as an important strategic initiative intended to drive long-term shareholder value.[10] But in its discussion of the risks the company faced, it acknowledged that climate change legislation or related government regulations could have significant adverse effects on its ability to achieve business goals in emerging carbon offset markets.[11] Should regulation or market standards change, offset suppliers could also face significant impacts to their business viability.

Finally, today’s offsets markets do not provide the level of disclosure required for investors to adequately assess a company's use of carbon offsets. Existing voluntary disclosure frameworks like CDP (formerly the Carbon Disclosure Project) are by definition left up to a company's discretion to complete. Even among the subset of companies that make voluntary disclosures, continuity is not guaranteed. For instance, Wells Fargo claimed “carbon neutrality” across its Scope 1 and 2 emissions in 2019 and 2020, based on its carbon offset purchases.[12] While the company disclosed the details of its 2019 offsets purchases in a 2020 CDP filing,[13] we were unable to find a similar disclosure for its 2020 purchases. As a result, it is not possible for investors to use public information to identify or assess the offset credits upon which this carbon neutrality claim relied. Consistent offset disclosure is necessary for investors to perform due diligence on offset integrity and check alignment with net-zero and other climate goals.

The inadequacy of the voluntary disclosure regime to date only emphasizes the importance of the proposed SEC rule for investors. Crucial elements of a company's offset strategy — such as what credits a company has “retired” to claim toward its climate goals, and whether that company is engaging in net-zero aligned offsetting based on carbon removal — are also impossible to systematically assess in today’s carbon markets.[14] Accordingly, we respectfully

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via CDP’s website (see response C11.3a) (“[The c]ost of carbon is also used as a shadow price for hypothetical costs when comparing carbon alternatives that may be more costly now but may be a strategic investment if associated carbon costs were to become a reality.”).

[9] Weyerhaeuser Company, Annual Report (Form 10-K) (Feb. 18, 2022) at 18.

[10] *Id.* at 36.

[11] *Id.* at 37.

[12] Wells Fargo & Company, Environmental, Social, and Governance Report (July 2021).

[13] Wells Fargo & Company’s annual CDP disclosures can be accessed via CDP’s website. Specifically, no data were provided for question C11.2a in the 2021 filing covering the 2020 calendar year.

[14] Sadie Frank et al., *supra* note 3 (describing how the main carbon offset registries do not consistently disclose the identity of companies or other actors who “retire” carbon offset credits to make claims).

urge the SEC to strengthen its proposed rule to require (1) the disclosure of credit retirements to substantiate claims made on the basis of those credits and (2) the separate disclosure of whether a company is engaging in carbon removal, including through the purchase and retirement of carbon removal credits.

Below, we address the SEC's offset-related Questions 24, 101, 170, 173 and provide responses to Questions 2 and 168 for additional context on carbon offset disclosures.

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

We expect that investors will use the proposed carbon offset disclosures to assess a company's transition-risk profile. The degree to which a company participates in carbon markets — either as a supplier or a purchaser of carbon offsets— has implications for its overall risk profile and business outlook. For instance, a company might develop a business strategy to address transition risk based on the assumption that offset credits will be cheap and plentiful, and therefore preferable to direct investments in decarbonization. This strategy could make financial sense if the long-term price outlook for carbon offsets indicates that credits will be cheaper than other emission-reducing activities. But changes in either the regulatory environment or voluntary market structure could lead to significant impacts on both the price and the availability of offsets, particularly if markets move towards higher-quality carbon removal — a widely acknowledged need in order to achieve net-zero targets.[15] These uncertainties, and the substantial opportunity costs that may arise from not investing in decarbonization early, illustrate why investors need to understand the degree to which a company's business strategy relies on carbon offsets to mitigate transition risk.

We note that not all registrants incorporating offsets into their climate-related business strategy will use them in the context of a long-term greenhouse gas emission reduction goal. For some companies, carbon offset credit sales could present a significant business opportunity — regardless of whether they have an emission reduction goal. But companies that intend to sell carbon offset credits are no less exposed to offset market risks. Thus, even for registrants that

[15] Science-Based Targets initiative, SBTI Corporate Net-Zero Standard (Oct. 2021) at 58 (defining "net zero" to require permanent carbon removal to "neutralize" any unabated, residual emissions); Intergovernmental Panel on Climate Change, Climate Change 2022: Mitigation of Climate Change, Summary for Policymakers (2022) at 40 ("The deployment of carbon dioxide removal (CDR) to counterbalance hard-to-abate residual emissions is unavoidable if net zero CO_2 or GHG emissions are to be achieved.").

may not associate offsets with mitigating transition risk, we expect that investors will use the SEC's proposed disclosures to assess companies' overall investment risk profile.

For further description of the risks associated with carbon offsets, including from litigation, human rights violations, and reputational risks, we respectfully direct the SEC to the Americans for Financial Reform technical letter.

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

Yes, we strongly support the SEC requiring registrants to disclose any role that carbon offsets and RECs play in their strategy, business model, and outlook. Carbon offsets are already a core component of many registrants' business strategies, and because offsets present a variety of material risks that are not addressed by voluntary market disclosures, mandatory disclosure requirements are urgently needed. In order to strengthen the proposed rule, we suggest the SEC require the inclusion of the following specific considerations.

First, we suggest that the SEC require disclosure of a registrant's assumptions concerning its current and future offset use. With respect to current use, this should include a description of what specific credits a company has retired for the purposes of reporting under 17 CFR § 229.1506(d) and the reasons for retirement — for instance, to support a climate-related target or claim. For future use, this should include a description of how a registrant's offset credit portfolio is expected to change over time. Understanding how a company expects its offset credit portfolio to change can help investors gain a comprehensive picture of how a company manages risk. For example, a company might anticipate regulatory developments and subsequently expect to pivot away from offset purchases over a certain timeframe.

Second, we suggest the SEC require registrants to describe the extent to which they are purchasing or relying on carbon removal in their business strategy, if any. Carbon removal is a rapidly growing focus of corporate climate action.[16] Carbon removal can be understood as both

[16] See, for example, Frontier Climate (describing a commitment to procure $925 million worth of permanent carbon removal, funded by Stripe, Google, Meta, Shopify, and McKinsey & Company); Lucas Joppa et al., *supra* note 7 (reviewing Microsoft's experience procuring carbon removal); Science-Based Targets initiative, *supra* note 15 (a prominent private sector net-zero standard that requires permanent carbon removal); Akshat Rathi and Stefan Nicola, Musk and Google Add to $2 Billion Boost for Carbon Removal, *Bloomberg Green* (May 3, 2021) (reviewing recent investments in carbon removal companies and commitments to corporate carbon removal procurement); Amrith

a specific activity that is integral to net-zero commitments and as a distinct category of carbon offset credits that some companies purchase.[17] Because a carbon offset credit can represent an avoided emission, an emission reduction, or carbon removal, it is essential for companies that are pursuing net-zero climate goals to specify their reliance on carbon removal services to mitigate unabated emissions. Registrants who rely on carbon removal should describe their current use and future expectations for carbon removal, including the expected permanence of carbon removal and storage services, to provide investors critical information to assess net-zero targets and the integrity of credit purchases.

Finally, we encourage the SEC to further clarify that regardless of whether a company uses offsets in the context of a climate target or goal, any use or intended future use of offsets should trigger disclosure of how offsets fit into a registrant's business strategy and outlook. A broader disclosure requirement is necessary because offset-related risks to strategy and business outlook — including market and policy risks, for both buyers and sellers of offset credits — are significant, whether or not a registrant has set an emission reduction target.[18]

While the proposed text for 17 CFR § 229.1502(c) could already be interpreted to require disclosure regarding offset usage in the strategy, business model, and outlook section regardless of whether a registrant has a climate-related target or goal, we would recommend that the SEC edit the text of the proposed regulation to clarify that this is the correct reading.

The proposed text currently reads:

> "Include in this discussion how any of the metrics referenced in § 210.14-02 of this chapter and § 229.1504 or any of the targets referenced in § 229.1506 relate to the registrant's business model or business strategy. If applicable, include in this discussion the role that carbon offsets or RECs play in the registrant's climate-related business strategy."

We would suggest that this text be clarified by adding the following sentence:

> "This could include a strategy to achieve a specific target or goal, a strategy to offset a registrant's own greenhouse gas emissions, or a strategy to sell credits in or otherwise profit from carbon markets."

Ramkumar and Ed Ballard, Carbon-Removal Industry Draws Billions to Fight Climate Change, *Wall Street Journal* (June 8, 2022) (reviewing similar trends).

[17] Sam Fankhauser et al., The meaning of net zero and how to get it right, *Nature Climate Change* 12: 15-21 (2021) at 18 ("Because net zero requires the physical balancing of residual emissions with removals, any entity using carbon credits to deliver net zero would need to purchase exclusively carbon 'removal' credits.").

[18] See our response to Question 2.

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

Yes, we strongly support the SEC requiring registrants to exclude any use of purchased or generated offsets when disclosing its Scope 1, Scope 2, and Scope 3 emissions, as proposed in 17 CFR § 229.1504(a)(2). Reporting offsets separately from total emissions is crucial for investors to gain a full picture of a registrant's overall emissions profile, and to ascertain the alignment of that emissions profile with any climate targets, goals, or strategies.

The SEC's proposal will not unduly burden companies because the information necessary to calculate net emissions and gross emissions separate from purchased or generated offsets is identical. The information value of disclosing gross emissions is higher, however, and further justified by the fact that leading private standards already require the use of purchased or generated offsets to be reported separately from gross emissions.[19]

Finally, an investor that is interested in a company's emissions net of offset usage can easily calculate this information from the gross emissions and credit use subtotals. In contrast, requiring registrants to only report a net value would restrict the full set of information available, frustrating investors' ability to ascertain whether companies are using carbon offsets to pursue their climate targets and whether companies' targets are net-zero aligned (for the reasons described in response to Question 24, above).

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

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[19] Science-Based Targets initiative, *supra* note 15 at 21 ("Carbon credits do not count as reductions toward meeting your science-based targets. Companies should only account for reductions that occur within their operations and value chain."); Partnership for Carbon Accounting Financials, Draft New Methods for Public Consultation (Nov. 2021) at 32-33 ("Ultimately, the goal of the PCAF Standard is to transparently report the total emissions impacts of investments, not diluted by credits purchased or sold."); Greenhouse Gas Protocol, A Corporate Accounting and Reporting Standard: Revised Edition, World Business Council for Sustainable Development and World Resources Institute (Mar. 2004) at 60 ("It is important for companies to report their physical inventory emissions … separately and independently from any [carbon offset purchases] they undertake.").

triggered, or do we need to provide additional guidance? Would our proposal discourage registrants from setting such targets or goals?

Yes, we strongly support the SEC requiring a registrant to disclose whether it has set any climate-related targets or goals. A target that implicates a registrant's operations and expenditures has material impacts for its business. In many cases, the absence of a climate-related target or goal would also constitute material information for an investor concerned with transition risks.

We suggest that the SEC further clarify that this disclosure requirement applies to corporate climate claims as well as to a specific target or goal. Corporate climate claims include statements such as achieving "carbon negative,"[20] "carbon neutral," or "net zero" status at a brand or product level. Companies routinely describe themselves or their products as either "carbon neutral" or "net zero," in addition to setting specific activity targets, such as reducing emissions 40% by 2030. Etsy, for example, describes itself in a recent 10-K as maintaining a carbon-neutral shipping operation for products sold from its website while it works separately toward achieving a net-zero target validated by the Science-Based Targets initiative.[21] Autodesk states that in 2021 the company achieved an "ongoing commitment to being net-zero emissions."[22] Freshpet meanwhile markets Nature's Fresh as a carbon-neutral brand, thanks to a carbon offset partnership with Conservation International.[23]

The claim that a particular shoe is carbon neutral may not be material to every investor in a company, but to the extent that a company is relying on these claims to send a market signal about its commitment to reducing climate risk or attract valuable customer segments, the disclosure of these claims is just as relevant as when the registrant has a climate target or goal. Further, as the Wells Fargo example described in the introduction to our letter shows, claims that a company is "carbon neutral" rely on carbon offsets, the use of which is not consistently disclosed to the public.[24] Because registrants are making significant, public-facing statements that rely on carbon offset usage, any such claims should trigger the broader offset disclosure provisions in the proposed rule.

Further clarifying what triggers disclosure requirements can reduce regulatory uncertainty for market participants, who may themselves be unsure of when to disclose their offset use. Some registrants have plans to use offsets as a part of initiatives that do not clearly meet the definition of a climate-related target or goal as described in the draft rule's examples. Carnival

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[20] Brad Smith, Microsoft will be carbon negative by 2030, Official Microsoft Blog (Jan. 2020).

[21] Etsy, Inc., Annual Report (Form 10-K) (Feb. 24, 2022) at 19, 22.

[22] Autodesk, Inc., Annual Report (Form 10-K) (Mar. 14, 2022) at 10.

[23] Freshpet, Inc., Annual Report (Form 10-K) (Feb. 22, 2021) at 5.

[24] See discussion in the text accompanying notes 12-13, *supra*.

Corporation & plc, for example, reports in a recent 10-K that it has plans to achieve net carbon-neutral cruise ship operations by 2050 while “minimizing” the use of offsets.[25] While the company doesn’t elaborate in that document on what it means to minimize offset use, its voluntary disclosures indicate that it has been purchasing carbon offset credits since at least 2018. Because it is unclear whether achieving carbon-neutral ship operations by 2050 would qualify as a climate-related target or goal that would trigger offset disclosure under the proposed 17 C.F.R. § 229.1506(d), it is also unclear whether this company’s offset purchases would have to be disclosed in its annual SEC filing. They should be.

As a way to reduce confusion regarding what would trigger disclosure requirements, we encourage the SEC to provide a wide range of examples of claims, targets, and goals that would require disclosure. This could include carbon neutral, carbon negative, or net-zero marketing claims,[26] as well as specific targets validated by the Science Based Targets initiative, the Voluntary Carbon Markets Integrity Initiative (VCMI),[27] and other private-sector standards.

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

We strongly support the SEC requiring a registrant to discuss how it intends to meet its climate-related targets or goals as proposed. Without this information, investors cannot assess what material changes to its business a company might be planning in service of its corporate goals, nor the effectiveness of a company's plans to reduce transition risk. We also strongly support the SEC distinguishing between the use of carbon offsets that reduce or avoid emissions and those that provide carbon removal services. In addition, we note that carbon

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[25] Carnival Corp. and Carnival plc, Annual Report (Form 10-K) (Jan. 27, 2022) at 15.

[26] We note that corporate marketing claims involving carbon offsets may already be subject to regulation and litigation risk. *See* Federal Trade Commission, Guides for the Use of Environmental Marketing Claims, 77 Federal Register 62,122 (Oct. 11, 2012) (codified at 16 CFR Part 260).

[27] Voluntary Carbon Markets Integrity Initiative, Provisional Claims Code of Practice (June 7, 2022) at 32 (proposing carbon offset use disclosures that are comparable to the proposed SEC rule).

markets are in flux, with standards that might evolve away from a conventional "offsetting" model in the future towards the direct procurement of limited quantities of carbon removal.[28]

As described in our response to Question 168, we encourage the SEC to clarify that the trigger for disclosure of targets or goals — and any subsequent disclosures like plans for meeting goals — can refer to a specific change in business activity like a percentage of emissions reduced by a certain time, or to broader statements like a company or major brand achieving or pursuing "net zero," "carbon neutral," and other emissions-related aspirations.

We also encourage the SEC to provide examples of what would trigger the disclosure requirements, as well as examples of corresponding plans. For instance, the SEC could provide an example of a net-zero target that relies on carbon removal to compensate for any unmitigated corporate emissions and a claim of carbon neutrality based on the corresponding use of conventional offsets that reduce or avoid emissions. We believe simple examples would provide regulatory clarity for registrants and investors in the implementation stage of the rule.[29]

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

We strongly support the SEC requiring the disclosure of specific information regarding carbon offsets or RECs used. Along with the items currently identified in the proposed 17 CFR § 229.1506(d), we would suggest that the SEC require additional information.

First, registrants should disclose whether or not any offset credit usage represents carbon removal, for the reasons discussed in our responses to Questions 24 and 170. The disclosure of the type of credit used to achieve a company's climate strategy is crucial because different

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[28] David Burns et al., Guidance on Voluntary Use of Nature-based Solution Carbon Credits Through 2040, World Resources Institute (June 2, 2022); Frances Wang et al., Addressing critical challenges in carbon dioxide removal, ClimateWorks (Dec.10, 2020).

[29] We recognize that the SEC is not the appropriate body to define the requirements of a net-zero climate standard, but suggest that illustrating disclosure requirements with a generic example of a company that procures carbon removal services in support of a net-zero target would provide a helpful illustration of what disclosure requirements could look like for companies that elect this option.

strategies require certain types of credits. Achieving net-zero greenhouse gas emissions is necessary to stabilize global temperatures and requires that any remaining greenhouse gas emissions be fully neutralized by permanent carbon removals.[30] Without disclosure of whether an offset credit represents carbon removal services, investors will be unable to track whether a company's offset-based transition risk mitigation strategy is net-zero aligned. We emphasize that this disclosure would provide critical and objective information for investors, and would not involve the SEC establishing or regulating the appropriate definition of net-zero or other climate standards.

In addition to requiring registrants to identify any use of carbon removal services, we recommend that the SEC specify what it means to "use" a carbon offset. In most cases, this will mean that a company or its agent has retired an offset credit in direct support of the company's climate-related claim, target, or goal.[31] Companies (or their agents) typically lay claim to the unique environmental benefit of a carbon credit by retiring a credit on a centralized offset registry, which permanently takes the credit out of circulation. To ensure that investors can ascertain whether or not registrants have actually used the carbon offsets they purchase, we recommend the SEC require that companies specifically disclose which credits have been retired to substantiate a registrant's climate claims. Given that the SEC has already proposed that companies disclose which registries they are using, this information is entirely straightforward for registrants to provide.

Finally, we would recommend clarifying what it means for offsets to "have been used as a part of a registrant's plan to achieve climate-related targets or goals" as the proposed text of 17 CFR § 229.1506(d) provides. Some companies that use offsets have a clearly defined climate-related emissions reduction target, but do not use offsets in direct support of achieving that goal. Etsy, for example, purchases offsets that it uses both in direct support of current carbon neutrality claims and as a financial incentive to achieve a separate net-zero target. It reported in a recent 10-K filing that it purchases credits to offset the carbon emissions associated with shipping the products sold on its website.[32] Because of its "carbon-offset shipping" initiative, the company claims a status as a "carbon neutral business" — a status that

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[30] IPCC (2022), *supra* note 15 (identifying the need for permanent carbon removal to achieve net-zero emissions); H. Damon Matthews and Ken Caldeira, Stabilizing Climate Requires Near-Zero Emissions, *Geophysical Research Letters* 35: L040705 (2008) (one of the earliest studies documenting the need for net-zero greenhouse gas emissions to stabilize planetary temperatures); Thomas Hale et al., Assessing the Rapidly-Emerging Landscape of Net Zero Targets, *Climate Policy* 22: 18-29 (2022) (reviewing the growth of net-zero climate targets); Myles Allen et al., The Oxford Principles for Net Zero Aligned Carbon Offsetting, Oxford University (Sept. 2020) (proposing standards for how to transform current carbon offset use to align with the need for permanent carbon removal).

[31] Sadie Frank et al., *supra* note 3. It could also mean a company acquiring and holding offsets for resale without retiring them on its own behalf, or otherwise trading in carbon offsets for profit. Last but not least, it could mean a company treating carbon offset purchases as an internal carbon price.

[32] Etsy, Inc., Annual Report (Form 10-K) (Feb. 24, 2022) at 22, 31.

the company describes as an initial step toward its net-zero carbon emissions goal. Elaborating on the relationship between its “carbon-offset shipping” program and its net-zero goal, the company makes clear that it views its offset purchases not as a direct contribution to achieving net-zero emissions, but rather as “an internal price on [its] emissions, creating a financial incentive to support business decisions that reduce greenhouse gas emissions.”[33]

In other words, Etsy uses offsets to make a carbon neutrality claim and as an internal price on carbon, but intentionally excludes offsets from the company’s net-zero goal. If Etsy’s net-zero goal is the relevant climate-related target or goal in this context, rather than its current claim to carbon neutral status, then the proposed rule is ambiguous as to whether offsets have been used as part of Etsy’s plan to achieve a climate-related target. That could leave a registrant like Etsy uncertain as to whether its use of offsets would have to be disclosed under the proposed 17 CFR § 229.1506(d). Clarifying this point — whether by defining what it means to use a carbon offset, defining what constitutes a climate-related target or goal as we have suggested in response to Question 168, or otherwise — could help registrants efficiently comply with these important proposed disclosure requirements.

We respectfully suggest that whenever offsets are used for branding or marketing claims, that usage is material whether or not a registrant specifically uses offsets to comply with a formal climate target. Such claims may already be subject to regulation and litigation risks under the Federal Trade Commission’s Green Guides as well as related state laws.

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Thank you for the opportunity to submit comments.

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[33] *Id*. at 36.