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June 17, 2022

Ms. Vanessa Countryman,
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Dear Ms. Countryman:

Re: Securities and Exchange Commission's Proposed Rule on the Enhancement and Standardization of Climate-Related Disclosures for Investors, S7-10-22 87 FR 21,334 (April 11, 2022)

The Society for Mining Metallurgy & Exploration (SME) submits these comments on the U.S. Securities and Exchange Commission's ("SEC" or "the Commission") proposed rule entitled "The Enhancement and Standardization of Climate-Related Disclosures for Investors," which was published in the Federal Register on April 11, 2022 ("Proposed Climate Disclosure Rule" or "Proposed Rule").[1] SME is a professional society formed under Section 501(c) (3) of the Internal Revenue Code with more than 15,000 members serving the minerals industry. Its members include engineers, geologists, metallurgists, educators, students, and researchers.

SME also advances the worldwide mining and underground construction community through information exchange, education, and professional development. In supporting responsible mining, SME seeks to educate lawmakers, policymakers, and the general public on the complex technical issues associated with mineral development through technical briefing papers, studies, scientific and engineering articles.

**Experience in Prior SEC Rulemakings –** SME has participated in prior SEC proceedings including the 2018 rules modernizing the property disclosure requirements for mining registrants, generally referred to as Regulation S-K 1300, 83 Fed. Reg. 66344 (December 26, 2018). Regulation S-K 1300 was the culmination of SME's October 1, 2012 Petition for Rulemaking to the Commission to amend Industry Guide 7, the longstanding benchmark for SEC disclosures concerning mining properties and development. It was the goal of that rulemaking petition, and in large part the ultimate result of S-K 1300, to align more closely the Commission's disclosure requirements for mining properties with current industry and global regulatory practices and standards.

**SME Participation in SEC 2021 Request for Input -** More recently, SME responded to the SEC's March 15, 2021 statement requesting public input on whether current disclosure requirements adequately inform investors of the "known material risks, uncertainties, impacts, and

[1] 87 Fed. Reg. 21,334 (Apr. 11, 2022).

opportunities" posed by climate change and whether "greater consistency can be achieved." SME adopts and incorporates by reference these comments in the current proceeding.

**The Need for Climate Disclosure Regulations is still not established –** As our comments in response to the March 15 notice made abundantly clear, the question that the SEC has failed to answer is not how the Commission may best regulate climate change disclosures, but whether the SEC should issue additional climate risk disclosure standards in the first place. Congress has yet to enact comprehensive legislation regulating greenhouse gas emissions (GHG), nor has Congress passed laws mandating disclosure of climate related risks. Although the preamble to the SEC's 2010 interpretive guidance warned of the consequences of pending climate change legislation, including bills to impose a "cap and trade" system, ultimately none of those bills secured passage. *See,* 75 Fed. Reg. 6290 (Feb. 8, 2010). Fn. 4. As companies are already disclosing climate risks that meet traditional standards of materiality, the SEC should not adopt any broader disclosure standards absent congressional action.

The SEC's mission is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. It does not have any authority to independently establish environmental disclosure standards for the conduct of GHG emitting operations by public companies subject to its jurisdiction. Congress has not given the SEC the authority to mandate specific policy or business choices. For example, corporate disclosures should not be used as mechanisms for achieving any national targets or goals to reduce greenhouse gases or to enforce certain environmental standards. Irrespective of the merits of such additional disclosure in other contexts, it is not the Commission's prerogative to mandate disclosure unless it is material within the meaning of the federal securities laws, i.e., important to investment decisions concerning securities.[2]

As Commissioner Hester Peirce warned in her comprehensive critique of the new proposed rules, existing regulations already require the disclosure of material climate risks. See, *"We are not the Securities and Environment Commission, At Least, Not Yet."*

At the March 21, 2022, she offered the following comments about the Proposed Rule:

> "Many calls for enhanced climate disclosure are motivated not by an interest in financial returns from an investment in a particular company, but by deep concerns about the climate or, sometimes, superficial concerns expressed to garner goodwill." This places much of the information desired outside the materiality standard by which SEC disclosures are limited. The SEC should focus on requiring disclosure that is actually and directly material to the financial well-being of a company, rather than in satiating the desires for political special interests to use the Commission as an indirect means of achieving climate change or environmental objectives."

*https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321*

[2] *See,* Comments of the National Mining Association (June 15, 2021) for a detailed discussion of the legal authority of the SEC to adopt disclosure standards. *See*, Comments of the National Mining Association filed in this proceeding (June 17, 2022).

SME also endorses the 2022 comments of the National Mining Association (NMA). These comments further explain that the SEC's current disclosure requirements also adequately provide investors with material information on climate and ESG issues that aid them in their decision-making in their SEC filings.[3] In addition, many companies provide additional information voluntarily that goes beyond the materiality threshold. The Proposed Climate Disclosure Rule threatens to overwhelm investors with non-material information that will make it difficult – if not impossible – for investors to understand what information is most important.

Second, the NMA expresses a valid concern that mandatory disclosure of non-material risks "could proliferate investment bias and practices by investors and financial institutions to exclude certain energy-intensive companies and sectors from investment portfolios or restrict access to or significantly increase the cost of capital."[4] As the NMA explained, these types of biases and practices have a negative impact on certain types of companies, regardless of the companies' results, strategy, or financial performance. Despite NMA's expression of concern, the mandatory disclosure of certain climate information, without regard to whether the information is material, is exactly what the SEC is requiring in the Proposed Climate Disclosure Rule.

**The SEC should drop any requirement to report Scope 3 emissions -** Given the significant difficulties in reporting information that is accurate or reliable, the SEC should not require the reporting of Scope 3 emissions. The Proposed Rule identifies three classes – or "Scopes" – of GHG emissions: Scope 1 emissions which are defined as "direct GHG emissions from operations that are owned or controlled by a registrant;" Scope 2 emissions which are defined as "indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a registrant;" and Scope 3 emissions which are defined as "all indirect GHG emissions not otherwise included in a registrant's Scope 2 emissions, which occur in the upstream and downstream activities of a registrant's value chain."[5]

The Proposed Rule would require all registrants to disclose their Scope 1 and Scope 2 emissions and would require some registrants to disclose Scope 3 emissions "if those emissions are material, or if the registrant has set a GHG emissions reduction target or goal that includes its Scope 3 emissions."[6]

As the Industrial Minerals Association (IMA) also asserts in its comments,[7] Scope 3 emissions encompass a company's indirect emissions throughout its entire value chain, excluding emissions from the generation of electricity that the company generates or purchases (which are captured in Scope 2 emissions). Scope 3 emissions include all of the emissions generated by a company's suppliers and all of the emissions generated by consumers of the company's products. The calculation of this figure is daunting and will require registrants to rely on third parties for data (which may or may not be available), make assumptions about emissions (that will render the

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[3] *Id.* at 2, 3-5.

[4] *Id.* at 2.

[5] 87 Fed. Reg. at 21374

[6] Ibid, 21377

[7] IMA-NA Comments on File No. S7-10-22, The Enhancement and Standardization of Climate-Related Disclosures for Investors, at 2.

figure unreliable), and make calculations using methods that are in the nascent stages or development and are evolving. Given all of the uncertainties associated with the calculation of Scope 3 emissions, it is unclear that undergoing this exercise will result in any information upon which investors can comfortably rely. As both NMA and IMA argue, any disclosure of Scope 3 emissions should at most be voluntary.

**The SEC Should Leverage Existing Disclosure Programs -** The proposed GHG emissions disclosure requirement is unnecessary and redundant of the Environmental Protection Agency's (EPA) Greenhouse Gas Reporting Program. The program requires disclosure of Scope 1 emissions from large GHG emission sources, fuel and industrial gas suppliers, and CO2 injection sites in the United States. Emissions defined as Scope 2 under the Proposed Rule are also reported to the EPA by the electric utilities, which emit them as their own Scope 1 emissions. Overall, investors already have access to a wealth of climate-related data from SEC filings as well as EPA disclosure requirements, thereby rendering the Proposed Rule unnecessary.

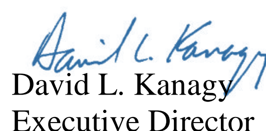
**The SEC Should Leverage Existing Disclosure Programs -** The proposed rule would also impose costly and burdensome information gathering and reporting requirements. Speaking as industry professionals who would be charged with the responsibility of collecting data and reporting the results, SME emphasizes the difficulty and quite frankly impossible compliance burden the new rule would place on companies subject to disclosure requirements. One such example follows: The financial impact metric disclosure requirements in proposed Rules 14-02(c), (d), and (i) would require a registrant to disclose the financial impacts of climate-related risks, weather events, and transition activities unless the aggregated impact of these risks, events and activities *is less than one percent of the total line item for the relevant fiscal year.* Far from providing, as the SEC contends, "a bright-line standard for registrants" that would "reduce the risk of underreporting such information," the proposed rule would inundate and overwhelm investors with immaterial information that would be impossible to comprehend. From a compliance standpoint, companies simply do not have the processes or procedures to conduct this kind of analysis at this granular level with reliable auditing and assurance.

**Conclusion**

As the NMA and IMA assert in their comments, the Proposed Climate Disclosure Rule creates a one-size-fits-all, prescriptive, rules-based, mandatory disclosure program that removes all of the flexibility that companies now have to be responsive to their stakeholders. It is unnecessary, redundant, and lacking in both statutory and other legal authority. The rule would further impose costly, burdensome requirements whose risks and costs far outweigh the benefits.

For the reasons stated herein, and by NMA and IMA, the SEC should not proceed to finalize the proposed rule.

Sincerely,



David L. Kanagy
Executive Director