



Submitted via <https://www.sec.gov/cgi-bin/ruling-comments>

June 17, 2022

Vanessa A. Countryman  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090  
([rule-comments@sec.gov](mailto:rule-comments@sec.gov))

**Re: Comments of the Marcellus Shale Coalition on the Proposed Rule “The Enhancement and Standardization of Climate-Related Disclosures for Investors,” SEC File No. S7-10-22.**

To Whom It May Concern:

The Marcellus Shale Coalition (MSC), a regional trade association with a national membership, appreciates the opportunity to submit comments regarding the above-referenced draft proposed Securities and Exchange Commission (SEC or Commission) rule. The MSC was formed in 2008 and is currently comprised of approximately 120 producing, midstream, transmission and supply chain members who are fully committed to working with local, county, state and federal government officials and regulators to facilitate the development of the natural gas resources in the Marcellus, Utica and related geological formations. Our members represent many of the largest and most active companies in natural gas production, gathering, processing and transmission, in the country, as well as the suppliers, contractors and professional service firms who work with the industry. MSC member companies include publicly traded companies as well as privately held companies, including many that qualify as small businesses.

The MSC appreciates the opportunity to provide comments on the SEC proposed rule for climate-related disclosures for investors (Proposed Rule) governing climate and the environment. Many MSC members are also members of the American Exploration and Production Council (AXPC) and the MSC endorses and joins with the comments filed by AXPC.

Pennsylvania is the second largest producer of natural gas among the states, and MSC members produce over 95% of the natural gas produced from unconventional formations in Pennsylvania. MSC members are fully aware of the challenges presented by climate change and have adopted numerous measures to reduce emissions. Many MSC members have developed ESG metrics and participate in “responsibly sourced gas” programs such as Project Canary, MiQ and others.

The increased use of natural gas in the electric power generation sector has been the leading contributor to the decline in carbon dioxide emissions within Pennsylvania. Consider that between 2008 and 2019, carbon dioxide emissions from the electric generation sector in Pennsylvania are down over 41%. Likewise, between 2005 and 2018 emissions of SO<sub>x</sub> and NO<sub>x</sub> are down 93% and 81%, respectively, from the electric generation sector in Pennsylvania. The

MSC and its member companies are proud of the contributions domestic natural gas production has made to reducing emissions

### General Comments

Historically the role of the SEC has been to protect consumers, provide for a fair, orderly, and efficient market and facilitate capital formation. The Proposed Rule goes far beyond that role and seeks to set national energy policy without any direction from Congress. The fact that Congress has not acted to force a “transition to a lower carbon economy” is not an invitation to the SEC to usurp the authority of Congress.

It is obvious that the Proposed Rule is an attempt to disadvantage the fossil fuel industry. When the Commission suggests that a climate-related “opportunity” for an energy company is to reduce its exploration and production operations (87 FR 21362), thus also reducing revenue and return for its investors, it becomes obvious that the Proposed Rule is designed to carry out an ideologically driven agenda. Congress has not passed any law requiring the elimination of fossil fuels, in large part because advocates of such a radical policy have failed to convince a majority of the American people and their elected representatives that the sacrifices necessary to do so are prudent or even realistic. SEC’s rule is designed to achieve that political goal without going through the democratic process.

The breadth of the Proposed Rule is so expansive that both public and private companies will be burdened. Public companies that are required to report will not be able to properly assess their climate-related risks or properly determine their emissions without obtaining information from companies in their value chain. These companies may be privately held, having no obligation to evaluate climate-related risks or report emissions. However, to continue to do business with the public company they will need to do both. Through the Proposed Rule, the SEC is essentially mandating climate policy for entities not subject to its jurisdiction and using public companies as its enforcement department. This is inappropriate, unfeasible, and well outside the scope and statutory authority of the Commission.

When the Commission suggests that registrants could work with “its suppliers and downstream distributors to take steps to reduce those entities' Scopes 1 and 2 emissions” or “could seek to reduce the potential impacts on its business of its upstream emissions by choosing to purchase from more GHG emission-efficient suppliers or by working with existing suppliers to reduce emissions” it is not providing information useful to investors. Rather, it is taking an action that is clearly designed to force emission reductions throughout the economy. See 87 FR 21377. This is a task for which the Commission has neither the authority nor the expertise.

While the SEC asserts that the rule is necessary to provide clarity and consistency for investors, in reality it will do just the opposite. As currently drafted, the Proposed Rule is so convoluted and expansive that it will cause confusion, produce inaccuracies, lead to duplicative emission reporting, and provide fodder for costly and unnecessary litigation.

The Proposed Rule should be withdrawn. Disclosure of climate-related risks can provide important information for investors. However, a more narrowly tailored rule requiring public



companies to report data that can be readily accumulated and accurately reported will serve investors far better than the Proposed Rule.

### Climate-related Risk

#### Materiality

Although the Proposal references the time-honored definition of “materiality” as interpreted by the United States Supreme Court, the Proposed Rule actually greatly expands that concept. The level of detail required to be reported goes far beyond what any normal investor would consider material. The Supreme Court has made clear that materiality requires a determination of both probability and magnitude of impact. Attempting to predict that there is a long-term risk that will have a greater than one percent impact on a specific line item in a company’s financial statement is next to impossible. In fact, the Proposed Rule starts with the assumption that certain climate-related risks are a given and therefore must be reported and evaluated for their degree of impact. That approach removes the “probability” factor from the materiality determination. Especially when evaluating climate-related risk, “probability” must be part of the equation.

#### Evaluating Risk

The Proposed Rule requires covered companies to evaluate their climate-related risks, to disclose those risks and explain the methodology used to make the assessment. This evaluation is to consider potential future risks, current risks, and even historic risks. There have always been climate-related risks (more accurately weather-related risks) especially for an industry with a major portion of its operations performed outdoors. These risks have been readily understood by investors for decades. The SEC has failed to demonstrate what makes these risks of vital interest to investors today. It appears the SEC is going well beyond simply identifying risks of importance to investors, and instead attempting to drive social policy through newly imposed obligations on the business community.

It is obvious that the entire basis for the Proposed Rule is the SEC’s assumption that there will be increasing climate-related risks. The SEC fails to explain why it believes there will be increased climate-related risk and why that assumption is incorporated into the Rule. Predictions regarding the impact of climate change impacts are quite varied. Even within and among the IPCC reports there is a wide range of possible outcomes and the probability of those events coming to pass. In addition, some independent scientists hold different views on the potential severity that climate change may pose. With so many possible scenarios on which one could base the risk analysis, second-guessing and litigation are sure to follow. Requiring a company to predict its climate-related risk, particularly when even the so-called “consensus” documents present multiple possible scenarios, certainly does not lead to consistency or clarity in reporting. For example, if two companies base their risk evaluation on different modeled scenarios, an investor will not be able to make a meaningful comparison. In other words, the Proposed Rule will accomplish nothing other than to expose companies to arguments over whether they used the correct scenario – particularly as the SEC fails to provide any guidance or direction on what constitutes the correct scenario.



Moreover, the Proposed Rule places no boundaries on the scope of the risk assessment. To the contrary, the risk assessment must include risks to the company's "value chain." The Commission notes that value chain may include suppliers, distributors, users of sold product and even the "end of life treatment of sold products." The companies in the value chain may be publicly traded companies with their own SEC-imposed obligations or they may be private companies beyond the SEC's jurisdiction. Different but similarly troublesome questions arise in either event. In order to evaluate its own risks, a company must understand the climate-related risks faced by its suppliers and distributors, for example. Who will assess the risk? Will company A be allowed to accept company B's risk assessment or must company A do its own assessment of the risks faced by another company? If company B is also a public company with a duty to report can company A rely on company B's assessment and if so, must company B's risk assessment methodology also be reported?

On the other hand, company B may be a private company with no SEC reporting obligations. How will company A assess the climate-related risks for company B and what level of information will company B be willing to share with company A? When disclosing the methodology used, must company A specifically identify the climate-related risks faced by each individual supplier or distributor? Is there potentially tortious interference with contract if company A's assessment puts company B in a bad light? Presumably it would be efficient to have the two companies confer and reach an agreement as to the level of risk. Will such collaborations be seen as anti-competitive by antitrust authorities? It is clear that the SEC has failed to consider these implications and potential outcomes and, in doing so, will exacerbate and perpetuate uncertainty and inconsistencies among the investor and business community.

These questions illustrate the level of confusion that will prevail among public and private companies. In addition, the Proposed Rule will impose an expensive burden on companies and saddle them with an impossible task. As just one example, Section 229.1502(a)(1)(i)(B) provides:

(B) If a risk concerns the location of assets in regions of high or extremely high water stress, disclose the amount of assets (e.g., book value and as a percentage of total assets) located in those regions in addition to their location. Also disclose the percentage of the registrant's total water usage from water withdrawn in those regions.

If a company's main supplier is located in a high-water stress area will that supplier be willing to share that level of detailed information required by the Proposed Rule? If the supplier is not a public company, then it is unlikely to have made or want to make this disclosure.

Climate-related risk disclosure should be limited to the direct risks to the registrant company and should not require the evaluation of risks up and down the value chain. The Proposed Rule, as currently drafted, will place a huge and expensive burden on registrants and will create confusion and contention.



## Emission Reporting

Many of the same issues that make the climate-related risk disclosure requirements unworkable carry over to the emission reporting requirements. Initially, air quality protection is the job of EPA, not the SEC. There is no reason for companies to be compelled to report emissions beyond what EPA requires. Additionally, the requirement to disclose Scope 3 GHG emissions is totally unworkable.

## Materiality

Scope 3 emissions must be reported if they are “material.” The explanation of materiality as it relates to Scope 3 emissions once again introduces uncertainty and confusion leading to more contention and litigation. However, the explanation is clear in one regard – the Commission considers Scope 3 emissions from oil and gas operations to be presumptively material. See, 87 FR 21387-21379. Once again it becomes clear that the Proposed Rule is an attack on the fossil fuel industry to advance an ideological agenda and not to advance the mission and purpose of the SEC.

## Scope 3 Emissions

Since the Commission has unilaterally concluded that Scope 3 emissions related to oil and gas activities are material, it may be useful to examine what that means. A natural gas production company, if a public company, will be required to report its Scope 1 and 2 emissions – a relatively straightforward task. Determining Scope 3 emissions, however, will be far more difficult. The Exploration and Production (E&P) company will need to know what the emissions are for the operations of the midstream company that gathers the gas. However, because midstream companies gather and transport gas for multiple producers, the information cannot be broken down by which E&P company is responsible for which emissions.

Likewise, the interstate pipeline operator will have emissions from compressor stations, for example, but again not speciated among the various producers of the gas. If the pipeline is transmitting gas for 10 different producers, how will the emissions be reported? The natural gas may then go to a direct industrial customer or to a local distribution company. Is the E&P company now responsible to determine how much gas each customer uses? If any of these downstream companies are not public companies how will the E&P company obtain this information? Is the public company now an “enforcer” for the SEC, compelling companies not within the SEC’s jurisdiction to follow SEC dictates?

Most certainly, this same scenario will play out with many other industries. Companies will be responsible to quantify the emissions of a myriad of suppliers and distributors and perhaps thousands or millions of customers. Since companies upstream and downstream in the value chain will not have their emissions segregated by customer or supplier, it is inevitable that there will be double counting of emissions. There is little doubt these inflated numbers will be mischaracterized and misused by any number of government and nongovernmental organizations to further conflate public narratives and future policies.



Conclusion

The Proposed Rule goes far beyond the Commission's authority and mission. Rather than protecting the public and informing investors the Proposed Rule attempts to coerce both public and private companies to acquiesce in the Commission's concept of a national energy and climate policy.

On behalf of the Marcellus Shale Coalition, its member companies and employees, thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Callahan". The signature is fluid and cursive, with a large initial "D" and "C".

David E. Callahan  
President

