Comments of Barrick Gold Corporation

on the

Securities and Exchange Commission's Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors

87 Fed. Reg. 21,334 (April 11, 2022)

SEC File No. S7-10-22[1]

June 17, 2022

[1] The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,334 (proposed April 11, 2022) (to be codified at 17 CFR pts. 210, 229, 232, 239, 249) [hereinafter Climate Disclosure Rule], https://www.sec.gov/rules/proposed/2022/33-11042.pdf.

I. Introduction

Barrick Gold Corporation ("Barrick"), appreciates the opportunity to respond to the Securities and Exchange Commission's ("SEC" or "Commission") request for public comment regarding its proposed rule, The Enhancement and Standardization of Climate-Related Disclosures for Investors (the "Proposed Rule"), released on April 11, 2022. The Proposed Rule's implementation of climate disclosures for information filed with the SEC are important to a broad range of industries including the mining industry. We welcome the chance to share our insights, concerns, and suggestions.

Barrick is an international mining company based in Toronto, Ontario, Canada with a strong corporate and operational presence in the United States.[2] Barrick's global footprint is based, primarily, on its gold and copper production throughout the world. As one of the largest gold and copper mining companies in the world, Barrick has a large presence in North America, with the majority of its North American mining operations located in Nevada.[3] Barrick's copper production extends throughout the Middle East, Africa, and Latin America. Barrick is also among a small subset of approximately 235 Canadian companies that are dual listed on both the New York Stock Exchange and the Toronto Stock Exchange. As a dual listed company, Barrick utilizes the multijurisdictional disclosure system ("MJDS") and files its annual report with the SEC under cover of Form 40-F. As an MJDS filer with a global footprint, Barrick is uniquely positioned to

---

[2] Barrick's global footprint extends to the United States, Canada, Dominican Republic, Guyana, Suriname, Peru, Chile, Argentina, Mali, Cote d'Ivoire, Senegal, Democratic Republic of the Congo, Tanzania, Zambia, Egypt, Saudi Arabia, Papua New Guinea, and Japan. *See* BARRICK GOLD CORPORATION, ANNUAL REPORT 2021, at 5 (2021), https://s25.q4cdn.com/322814910/files/doc_financial/annual_reports/2021/Barrick_Annual_Report_2021.pdf [hereinafter ANNUAL REPORT].

[3] The majority of Barrick's interests in Nevada are held in the Nevada Gold Mines joint venture. Barrick is the operator of the joint venture and owns 61.5%, with Newmont Corporation owning the remaining 38.5% of the joint venture. ANNUAL REPORT, *supra* note 2, at 74.

comment on the Proposed Rule. In particular, Barrick wishes to address and advocate for the retention of the Proposed Rule's exemption for Form 40-F filers.[4]

As a responsible member of the United States domestic and international mining communities, Barrick is committed to the promotion and implementation of sustainable development and operations. The minimization of environmental impacts, including operational decisions to address and minimize climate change, is one of the four pillars of Barrick's sustainability strategy.[5] Further, transparency and openness are critical to Barrick's sustainability strategy which is one of the reasons why we are ranked in the 95th percentile of all mining companies assessed in the Dow Jones Sustainability Index's World Index, with leading scores in environmental and social reporting and water risk management.[6] In light of our demonstrated commitment to global sustainability, Barrick's concerns regarding the Proposed Rule are less about the Proposed Rule's underlying policy objectives or goals, and more about the practical difficulties of implementation for Barrick and similarly situated MJDS filers as well as the potential long term counter-productive effects of the Proposed Rule. Indeed, Barrick already provides disclosures in alignment with the Task Force on Climate-Related Financial Disclosures ("TCFD"), included not just in Barrick's voluntary Sustainability Report, but also in Barrick's regulatory filings filed with the Canadian Securities Administrators and the SEC.[7]

In this comment letter, we address five broad concerns regarding the practical effects of the Proposed Rule that are acutely important to MJDS filers and mining companies generally.

---

[4] *See* Climate Disclosure Rule, *supra* note 1, Question 181, at 279.

[5] *See* BARRICK GOLD CORPORATION, SUSTAINABILITY REPORT 2021, at 14 (2021), https://s25.q4cdn.com/322814910/files/doc_downloads/sustainability/Barrick_Sustainability_Report_2021.pdf [hereinafter SUSTAINABILITY REPORT].

[6] *See* SUSTAINABILITY REPORT, *supra* note 5, at 6.

[7] *See e.g.* Management's Discussion and Analysis for the year ended December 31, 2021 beginning on page 34 under the heading "Climate Change" (filed as exhibit 99.4 on Form 40-F), and the Annual Information Form for the year ended December 31, 2021 beginning at page 53 under the heading "Climate Resilience" (filed as exhibit 99.1 on Form 40-F).

First, the Proposed Rule should maintain the exemption for MJDS filers, and go further to provide alternative compliance options for issuers utilizing existing climate change reporting frameworks in their home countries. Second, if for some reason the MJDS exemption is not preserved and the Proposed Rule applies to Barrick, the Proposed Rule's requirements for the assessment of physical climate risks and the impacts on financial statements present many novel issues and will be challenging to implement and as a result more time will be needed to come into compliance with the Proposed Rule. Third, the Proposed Rule lacks sufficient guidance for issuers to calculate Greenhouse Gas ("GHG") emissions for disclosure in regulatory filings. Fourth, the attestation requirement is unreasonably onerous. And fifth, the Proposed Rule may hinder progress on climate related mitigation due to a decreased desire for sustainability reporting in a regulated marketplace. We strongly urge the SEC to allow market forces to drive the climate change reporting that is already provided to investors by way of regulatory filings, voluntary sustainability reporting, and mandated Environmental Protection Agency ("EPA") GHG emission reporting. The Proposed Rule, as drafted, provides insufficient guidance for compliance and does not allow sufficient time for companies to implement the new and more specific internal controls and procedures required to satisfy the new climate-related reporting obligations.

II. The Proposed Rule Is Particularly Burdensome On Filers With Obligations Under Multiple Jurisdictions.

Barrick is in a unique position to comment on the Proposed Rule because we file under the MJDS using documents prepared in accordance with Canadian securities laws to register securities under the Securities Act and report under the Exchange Act in the United States. Barrick's understanding of the Proposed Rule is that MJDS filers, like Barrick, would not be subject to the disclosure requirements in the Proposed Rule and will therefore continue to rely on their Canadian filings to satisfy their Exchange Act reporting obligations. The MJDS has been in effect for decades and streamlines Exchange Act reporting obligations for eligible Canadian entities, causing more Canadian companies to list on U.S. stock exchanges and increasing access and liquidity for U.S. investors. Just as MJDS filers are not subject to the new mining rules under Regulation S-K 1300 because of the robust protections provided to investors under Canada's National Instrument 43-101, we strongly believe that MDJS filers should not be subject to the Proposed Rule in light of Canada's anticipated climate disclosure rules.[8] The long-time deference shown by the SEC to Canadian reporting standards and regulatory review, which underpins the MJDS, should apply with equal force here as well. We strongly encourage the SEC to maintain this exemption under the Proposed Rule.

In addition to maintaining the exemption for MJDS filings, the SEC should include in any final rule the ability for issuers to rely on alternate reporting regimes for disclosure of GHG emissions and climate risks. There are a number of robust reporting methodologies and voluntary disclosure frameworks, some of which were borrowed from for certain aspects of the Proposed Rule. These include the TCFD, the Greenhouse Gas Protocol, the CDP (formerly the Carbon Disclosure Project), the Global Reporting Initiative, the International Sustainability Standards Board ("ISSB"), the International Organization for Standardization, and others. As an alternative compliance option for companies already reporting under these methodologies and frameworks, the SEC should provide an option in the final rule that would allow companies who have adopted one of these reporting frameworks for climate related disclosures, to satisfy the final rule with those disclosures. For example, we believe that a company that reports pursuant to the TCFD should be able to simply use that information to satisfy the Proposed Rule. These

[8] Canadian Securities Administrators, *Proposed National Instrument 51-107: Disclosure of Climate-Related Matters* (Oct. 18, 2021), https://www.osc.ca/en/securities-law/instruments-rules-policies/5/51-107/51-107-consultation-climate-related-disclosure-update-and-csa-notice-and-request-comment-proposed [hereinafter *Proposed National Instrument 51-107*].

frameworks are well established and adopted by many companies. Such an alternative compliance option would provide stability and reduce unnecessary expense for companies that have already established a system to report under these frameworks, and would allow investors to continue to follow, compare and track reporting under that same framework.

Concerns regarding duplicative reporting, and related costs and inefficiencies, were effectively addressed by the Commission in the recently adopted final rules relating to disclosure of government payments by resource extraction issuers (the "Government Payments Rules"). We encourage a similar approach here. For issuers subject to reporting in multiple jurisdictions, there was a concern regarding duplication of reporting. In order to address this concern, the Commission permitted use of alternative reporting under certain circumstances.

The Government Payments Rules provide that a "resource extraction issuer that is subject to the resource extraction payment disclosure requirements of an alternative reporting regime that has been deemed by the Commission to be substantially similar to the requirements of Rule 13q-1 ... may satisfy its disclosure obligations ... by including ...a report complying with the reporting requirements of the alternative jurisdiction." Both the EU Directives and the Extractive Sector Transparency Measures Act ("ESTMA") in Canada have been recognized as substantially similar disclosure regimes for purposes of alternative reporting.

We believe allowing alternative reporting using the same "substantially similar" standard that was used in the Government Payments Rules would be an appropriate way to address concerns related to increased costs and inefficiencies resulting from duplicative reporting under similar, but different standards in the United States and Canada, for example. We believe it would be consistent with the desire to enhance investor disclosure while reflecting a consideration of competition, efficiency, capital formation, and costs if the final rules permitted alternative reporting in the same manner as the Government Payments Rules, including use of the Form SD for the filing of the alternative reporting.

If the SEC decided not to preserve the exemption for MJDS issuers in the final rule, it is almost certain that companies like Barrick would be in a situation where they would report certain climate information in their home jurisdiction, and be simultaneously required to report potentially different climate related information in the United States that may conflict in presentation format or substance with its Canadian reporting, or require different data-gathering and verification procedures that could create significant burdens or inefficiencies. Canada's proposed climate disclosure rules do not follow the same climate risk and emission impact framework as set out in the Proposed Rule.[9] If Canada adopts a climate related disclosure framework based on TCFD, we believe investor concerns in the U.S. should be adequately addressed although there would likely be some differences in the reporting requirements. Requiring companies to comply with similar, but not identical, reporting requirements increases the costs of compliance without increasing the quality of disclosure to investors. We believe it makes little sense, and would be contrary to the intent of the rule—to better inform investors—to require companies to prepare separate filings, applying different standards, to satisfy slightly disparate jurisdictional rules. The SEC should consider accepting the reporting compiled under these alternative frameworks to satisfy reporting obligations under the Proposed Rule.

III. The Proposed Rule Sets a Difficult and Unrealistic Standard for Climate Risks and Impacts on Financial Statements.

The Proposed Rule includes a number of "Climate-related metrics" that must be assessed and disclosed in annual reports and reflected in financial statements. These include both positive and negative financial impacts due to climate transition activities or extreme weather events and

[9] Proposed National Instrument 51-107, *supra* note 8.

any estimates, assumptions, or expenditures assessed on a line by line basis in the financial statements due to such transition activities or climate impacts, including extreme weather events.[10] The threshold for triggering disclosure under the Proposed Rule is if the impact on any line item is greater than 1% of the total line item for the fiscal year.[11] On the surface, this seems like a logical way to assess how a company is impacted by climate change, and what the company is doing to manage its resources to address those impacts. However, there are a number of difficulties with the SEC's proposed climate risk disclosure approach.

First, companies may not have access to the information they need to report on the impacts of climate change on a financial statement line-item basis, or they may lack the ability to quantify the risk with the information they do have. For example, what is the financial risk for wildfire damage to mining operations on land owned by the Federal Government, and how should a company calculate the potential liability to reflect that risk? The company has no control over fire prevention measures on lands it does not own, and mitigation of that risk could depend on a multitude of factors the company cannot predict. Therefore, the decision to include the risk in financial disclosures becomes entirely subjective based on assumptions about whether the line item is affected. Something so subjective should not carry the weight of legal liability. Nor does it provide reliable information to investors that is comparable to information disclosed by other companies, in part because all companies will need to adopt highly subjective and bespoke accounting policies to comply with the Proposed Rule.

If the risk cannot be quantified because the information is not available, how can the determination be made whether it exceeds the 1% threshold? If a company like Barrick, which is both committed and invested in mitigating climate risk, and has resources to make informed

---

[10] *See* Climate Disclosure Rule, *supra* note 1, § 210.14-02, at 452–55.
[11] *See* Climate Disclosure Rule, *supra* note 1, § 210.14-02, at 453.

decisions about its financial statements, is struggling to understand how to comply with this aspect of the Proposed Rule, a natural question is how will other companies with fewer resources ever be able to comply? And, the risks of non-compliance are significant. If the SEC determines that a disclosure or financial statement note is lacking or inaccurate, Barrick could be required to restate its financial statements setting off a chain reaction of adverse consequences including potential shareholder class action litigation, SEC enforcement action, and the recoupment of executive compensation.

Similarly, the requirement to assess climate related risks on a company and its consolidated financial statements on short-, medium-, and long-term timeframes[12] also poses difficulty and creates uncertainty for registrants, including Barrick. This is especially true with respect to the long-term timeframe. The number of climate related scenarios that could impact business operations or financial statements that could be predicted beyond 10 years is infinite. The longer the time period evaluated, the less certainty there is to assess climate related risks and impacts. Yet, despite this uncertainty, the Commission would require financial statements to include disclosures that are based on these infinitely variable scenarios.

The Proposed Rule is also unclear about how broadly the Commission intends to require these speculative risk assessment disclosures to extend. For example, if there is a climate related risk for flooding to a mining operation because storms might exceed the traditional 100-year storm event that most mines have been designed to accommodate, the mining company could likely predict the physical impacts to operations and/or capital repairs that might be required due to the flood, and these impacts could be reflected in financial statement notes. In effect, these are on-site impacts that can more readily be measured and quantified. However, if the impacts to the

[12] *See* Climate Disclosure Rule, *supra* note 1, § 229.1502, at 463.

mining operations also cause damage to local communities, there is the risk of political unrest and protests by local residents that will likely cause indirect impacts on the mine, in other words, off-site impacts. It is unclear whether the Proposed Rule would require disclosure of such off-site impacts, in addition to the on-site impacts, both of which could impact the viability of the mining operation. Again, the scope of potential business impacts are very difficult to define, and cannot be predicted with the certainty that is necessary for inclusion in financial statements.

Not only is it problematic that a company may not have the information necessary for it to properly make these climate risk disclosures and financial statement notes, and will need to decide what to disclose out of the infinite number of possible risks in long term climate risk analyses, but a company's auditors will also require an objective standard in order to audit the information a company ultimately includes in its financial statements, which the Proposed Rule fails to provide. With so much complexity and subjectivity surrounding these disclosures in financial statements, these issues may well rise to the level of critical audit matters for a company's auditors.

The second difficulty with the climate risk approach in the Proposed Rule is that it is nearly impossible to consistently tease out the true impact of a situation attributable to climate change as compared to the impact attributable to other business drivers. If Barrick were to make improvements to a tailings impoundment, for example, how much of that decision is attributable to climate change risks in the form of extreme weather impacts on the impoundment? What if the improvements were required by a state regulator? What if the improvements made operations run more smoothly thereby enabling higher production targets? Barrick is left to make an assumption about how much a decision is driven by climate change, and the particular financial impact of that driver. There are many aspects of the mining business that could arguably be attributable to a climate change metric, but it is unclear how to make that determination when, as is often the case, there are multiple reasons for the same business decision. Adopting accounting policies to address these types of decisions will require extensive effort and may still ultimately be arbitrary, which would leave registrants vulnerable to being second-guessed and make it unlikely that investors will receive useful, comparable information across registrants.

Barrick is also concerned about the disclosure threshold of 1% of the financial statement line item.[13] This is a very conservative bright-line threshold that may not be reasonable in all situations and ignores customary principles of materiality, which do not apply threshold percentages on a line item basis and may or may not use 1% as the materiality threshold. Companies should have the leeway to make materiality determinations on a case-by-case basis, taking into consideration what is appropriate for the particular situation. Moreover, the 1% threshold may not align with other materiality thresholds applied elsewhere in the financial statements. This raises a concern that other internal materiality thresholds applied by a company are not appropriate if they deviate from a 1% threshold. Why should a company be required to apply a 1% threshold to all line items within its financial statements just because the Proposed Rule requires it for purposes of the analysis of climate related risks and impacts?

Given this uncertainty, registrants are likely to err on the side of disclosing and reporting numerous climate risk notes on financial statements, irrespective of whether other factors are actually driving the financial expenditures or reserves, in an effort to ensure that they do not run afoul of the Proposed Rule. This likely will lead to an overwhelming volume of information for investors. It will not provide any distinguishable metrics to inform an investor about a company,

[13] *See* Climate Disclosure Rule, *supra* note 1, § 210.14-02(b)(1), p. 452–453.

other than the company's interest in maintaining compliance with SEC disclosure rules. Such an outcome is not useful, nor in line with the SEC's stated goals for the Proposed Rule.

IV. **The GHG Emission Reporting Requirements Should be Narrowed.**

The Proposed Rule requires disclosures of three types of GHG emissions; Scope 1 emissions, which are those that the registrant directly emits as part of its operation; Scope 2 emissions, which are those that are emitted by the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by the registrant; and Scope 3 emissions, which occur in the upstream and downstream activities of a registrant's value chain.[14] Barrick already reports these emissions under the TCFD framework, and will continue to disclose them under the Canadian climate rules once finalized. So, Barrick's concern is less about whether or not to disclose these emissions, and more about the need for alternative options for reporting that make sense for companies in the commodity minerals market.

First, the Commission does not need to reinvent the wheel with respect to frameworks for reporting these GHG emissions. There are a number of frameworks that many companies have already adopted, as referenced in the prior section of this comment letter. The GHG emissions reported under these frameworks should suffice for compliance with the SEC's Proposed Rule. These frameworks have been refined to accommodate needs of specific industries and companies to produce reporting that makes sense to investors and is reliable. The Proposed Rule does not provide any more specific metrics for quantifying and measuring these emissions than existing regulatory requirements or voluntary frameworks, so reporting under the Proposed Rule would not garner any more clarity on GHG emissions than what companies already report and investors

[14] *See* Climate Disclosure Rule, *supra* note 1, § 229.1500(p)–(r), at 460.

already receive.[15] To the extent companies are already following these other frameworks and protocols, the SEC should allow continued use and reporting under those programs to satisfy U.S. reporting requirements.

Second, with respect to Scope 3 emissions, the Proposed Rule should recognize the unique position that a commodities producer, like Barrick, is in, with respect to disclosing downstream value chain reporting. In its current reporting of Scope 3 emissions, Barrick accounts for the GHG emissions associated with its gold or copper that is delivered to smelters for further refining and distribution, and a limited amount of metals recycling. It does not track, nor should it be required to track, where the gold or copper ends up in final products. The Proposed Rule does not address the situation of commodities, and how far down the chain should a company like Barrick have to report. For example, does Barrick have to account for all of the energy and GHG emissions that result from the production of a smartphone that uses gold in its microchips? What about the energy and associated emissions used to charge each smartphone—are those counted too? If such emissions are to be counted under the Proposed Rule, it would lead to an enormous increase in the amount of emissions data reported but a decrease in that data's reliability and utility. Moreover, it is not a reasonable characterization of the climate impact that a gold mining company truly has when its mined material comprises such a miniscule part of an end product. Finally, most gold is either held indefinitely or recovered through recycling. As such, the time dimension to the extent of Scope 3 emissions is potentially endless for a company like Barrick.

---

[15] *See* Climate Disclosure Rule, *supra* note 1, at 195 (allowing for registrant to choose how it measures GHGs for Scope 2 – either by location based method or by emission factor directly); *see also id.* at 198 (by way of example, the SEC proposes to allow for estimates for fourth quarter emissions to meet filing deadlines).

Similarly, if you consider the production of copper, which is used in an extremely broad range of downstream products, these calculations get even more unwieldy. Copper smelters co-mingle copper in concentrate form received from multiple mining companies which means the subsequent tracing of the end use of such metal is highly problematic. Even with the safe harbor provisions for Scope 3 emissions, this obligation to calculate GHG emissions down the supply chain could be a cumbersome and ultimately inaccurate obligation for commodities producers like Barrick. We therefore urge the SEC to recognize the unique position of commodities producers and provide a clear boundary for assessing downstream Scope 3 emissions—at the smelting or refining stages of those commodities operations, or permit the use of alternative reporting regimes such as the GHG Protocol or the TCFD to satisfy the Proposed Rule.

V. The Attestation Requirement Creates Timing and Availability Issues Resulting in Liability Risks.

The attestation requirement for Scope 1 and Scope 2 emissions creates difficulties related to timing and availability of qualified professionals to perform the attestation. In the first quarter of any year, companies are busy compiling, calculating, and validating emissions data for various reporting purposes. It is already quite challenging to complete this process by mid to late March in time to meet existing reporting deadlines. These regulatory obligations include the requirement to report GHG emissions to the EPA under the Clean Air Act. In 2009, EPA promulgated mandatory GHG reporting requirements under 40 C.F.R. Part 98. EPA estimates that over 85-90% of all GHG emissions in the United States are already being reported under EPA's rule.[16] This is certainly true for Barrick, which estimates that substantially all of its GHG emissions from all of its operations are reported to the EPA. Barrick is concerned that issuers

[16] *See* EPA, FACT SHEET: GREENHOUSE GASES REPORTING PROGRAM IMPLEMENTATION (2013), https://www.epa.gov/sites/defulat/files/2014-09/documents/ghgrp-overview-factsheet.pdf.

would be unable to have a qualified professional attest to the accuracy of these emissions numbers in time to meet SEC's proposed reporting timeline, thereby rendering that issuer's reporting deficient or potentially inaccurate.[17] This is made even more difficult due to the SEC's proposed rapid implementation. If the proposed rules were effective by the end of 2022, large accelerated filers would be required to disclose Scope 1 and 2 information in their annual reports for 2023 (which are filed in early 2024), with a requirement for a limited assurance attestation to begin the following year. This provides a limited window for larger accelerated filers to establish the necessary additional controls and procedures to satisfy an attestation review for the new and specific climate related disclosure requirements. We note that the Conflict Mineral rules adopted in 2012 provided a two-year transition period for larger issuers before an attestation was required of certain conflict mineral reports, and we urge a similar or longer transition period be adopted here.[18] Simply put, more time is needed to incorporate an attestation requirement on top of these other compliance efforts.

As an alternative to GHG reporting under the Proposed Rule, the SEC could encourage the EPA to broaden the scope of its GHG reporting rule to capture a broader universe of GHG emitters and require that any missing sector to report GHG emissions under the EPA's rules. If the SEC continues to feel that compiling this emission information to be contained in an SEC filing which is readily available to investors at no charge, we propose that the SEC permit issuers to furnish the information provided to the EPA as an exhibit to its annual filings or under cover of Form SD (which is where conflict mineral reporting is, and government payments reporting by extractive issuers will be, filed). This would allow investors to have a more easily obtainable data set in its SEC reporting, but not place undue burden or enforcement risk on registrants. It

[17] *See* Climate Disclosure Rule, *supra* note 1, at 225.
[18] *See* Instruction 2 to Item 1.01 of Form SD.

would also avoid the potential discrepancy between EPA reporting and proposed SEC reporting with attestation completed prior to March 1st for large accelerated filers.

Not only is there insufficient time to complete the attestation, there likely are not enough qualified professionals to meet the demand without a longer transition period to ramp up this service industry. [19] The calculation of GHG emissions is highly complex and can involve measurements at a significant number of emission points at a particular facility. Generally, this is done through a combination of on-site environmental staff and an outside environmental consultant. It is not clear whether that environmental consultant would be sufficiently "independent" to provide the attestation services. Generally, an environmental consultant provides many services to a registrant, including the calculation of GHG emissions for purposes of reporting to the EPA. The SEC recognizes this difficulty in stating that they are not requiring further attestation requirements because of the evolving nature of GHG emissions.[20] Given these realities, the attestation professional should not be required to be independent to ensure there are enough resources for compliance with the final rule. We note that Qualified Persons under the new mining rules under Regulation S-K 1300 are not required to be independent, and we do not believe that an independence requirement is necessary for this purpose. Moreover, if the GHG emission landscape is evolving as the SEC acknowledges, the Commission should not require registrants to submit their GHG emissions calculations to attestation without a longer lead time to prepare.

VI. The Proposed Rule May Hinder Progress on Climate Change Mitigation.

Climate change is a significant issue for investors, as Barrick understands and has taken steps to address both in its regulatory filings with the SEC as well as in its extensive voluntary

[19] *Cf.* Climate Disclosure Rule, *supra* note 1, § 229.1505, at 474–79.
[20] *See* Climate Disclosure Rule, *supra* note 1, at 226.

sustainability reporting.   The SEC has also recognized the desire for investors to make investment decisions based on a company's transparency regarding climate change impacts and a company's responsiveness to climate change risks. The marketplace for companies to compete for these investors by continually reviewing and enhancing their published climate change goals is already thriving, and this competition is driving change and innovation for better metrics and reporting frameworks. Barrick respectfully suggests that the SEC should continue to allow the marketplace to drive innovation in this area, which may accomplish many of the same goals the SEC has stated it is trying to achieve with the Proposed Rule.

Indeed, the Proposed Rule may likely have the counterproductive impact of hindering the progress already made. This is because the risk of enforcement and disclosure liability could cause companies to be more reticent to continue to engage in aspirational goal setting in sustainability reports and climate change scenario planning. If climate change targets, metrics, and goals will subject companies to new disclosure obligations (like Scope 3 GHG emission reporting) and heightened legal risks (like climate disclosure in audited financial reports), it is natural to question whether companies might scale back their climate reporting as a result. This, in turn, could cause some companies to abandon or scale back their climate related targets.

Barrick has set and disclosed a number of such sustainability targets,[21] and will continue to do so in line with our science-based plans and overall sustainability strategy, but should the Proposed Rule apply to Barrick, it will be forced to evaluate the potential legal risks every time it

[21] Some of Barrick's sustainability goals are as follows: (a) Barrick has previously committed (set a goal) to reuse and/or recycling of 80% of water use and report under the ICMM Water Accounting Framework; (b) Barrick recently set a baseline for and engaged with, its supply chain on Scope 3 emissions which led to the determination of a goal to reduce 40% of emissions at Tier One assets; Barrick has committed to wetland restoration in Latin America, sub-Saharan Africa, and Papua New Guinea; and (c) Barrick has established a roadmap to the lofty goal of Net Zero emissions by 2050 and reduction in GHG by 30% by 2030.

sets and discloses such goals in the future. This may ultimately hinder such future goal setting, resulting in less climate related information being made available to investors.

VII. Conclusion

Barrick agrees with the SEC's desired goals of providing investors with information regarding climate risks and impacts for public companies. Indeed, Barrick is already reporting this information in its disclosures in Canada and the United States in line with our sustainability strategy. In furtherance of these objectives, Barrick urges the SEC to maintain the proposed exemption in the Proposed Rule for MJDS filers so that Barrick and similarly situated Canadian issuers can continue to fulfill their Exchange Act reporting obligations under the Canadian disclosure rules, including the Canadian climate disclosure rules once they come into effect. We further urge the SEC to provide flexibility for all registrants to report under already existing climate disclosure frameworks as an alternative to the Proposed Rule. Additionally, if for some reason the MJDS exemption is not preserved and the Proposed Rule applies to Canadian issuers like Barrick, Barrick believes that additional time will be required to establish policies and procedures specifically tailored to the new and extensive climate reporting required by the SEC.

Barrick respectfully suggests that the Commission's goals for improved climate disclosures can be achieved at a lower cost, burden, and risk to public companies. We appreciate the opportunity to share our views and comments on the Proposed Rule.