



June 17, 2022

Gary Gensler
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

RE: The Enhancement and Standardization of Climate-Related Disclosures for Investors, File No. S7-10-22

Dear Chairman Gensler:

These comments are filed on behalf of the Texas Alliance of Energy Producers (Alliance). We represent over 2,600 individuals and member companies in the upstream oil and gas industry; our members are oil and gas operators/producers, service and drilling companies, royalty owners, and a host of affiliated companies and industries in Texas and beyond.

The Securities and Exchange Commission (SEC) describes its disclosure rule as necessary to address investors' demands for transparency about climate change risks. However, the SEC simply lacks the authority to promulgate this rule, which would elevate climate change over material financial considerations and distort SEC's mission of protecting ordinary investors and promoting efficiency, competition, and capital formation in the marketplace. The SEC's regulatory function should be narrow in nature, not broad and sweeping, absent an action of Congress to grant specific additional regulatory authority to address the growing discussion about climate change.

The proposed rule has little chance of accomplishing its stated purpose. Many of the climate risks that are part of the public discussion are well into the future, perhaps even decades. The Intergovernmental Panel on Climate Change (IPCC) reports are littered with future outcomes in which the IPCC states it has "low confidence" in the most dire of those potential outcomes. Registrants today are simply unable to assess future climate risks with any certainty, meaning a rule that is meant to add certainty to registrants' disclosures will in fact generate high levels of uncertainty, which will do no service to investors at all. The result may well be to constrain capital formation, which is not what the SEC is empowered to do.

The SEC summary of the proposed rule says that as a part of the information submission by registrants on climate-related risks would include disclosure of a registrant's greenhouse gas emissions. As you are aware, there is an existing structure within the federal government for reporting greenhouse gas emissions. Establishing an entirely new GHG reporting requirement with yet another federal agency is duplicative and unduly burdensome to reporting companies.

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Further, SEC is proposing GHG reporting that goes even further than what is required under Clean Air Act (CAA) regulation. SEC lacks the technical expertise of the Environmental Protection Agency (EPA) yet is requiring vastly more emissions data than even the agency granted authority by Congress to regulate air quality seeks to request but with none of the rigor of the CAA nor technical guidance.

If the SEC is to move forward with this rule, the requirement for reporting GHG emissions directly to the SEC should be eliminated.

Additionally, we have concerns that the information gathered under the new rule will not be used simply to provide material information to investors, but to influence the activities of those who are subject to the rule and turn the SEC into an environmental regulator in addition to its role as a financial regulator. The “risks” to which a registrant may be exposed would appear to include the risk that the regulatory and cost burdens would themselves materially change financial outcomes, or perhaps even threaten the viability of a company as a going concern.

We are concerned that this rule is particularly ill-timed, as it is designed to limit or deny financing to oil and natural gas companies just at a time when more production is needed to bring down record high energy prices. By contributing to the regulatory burden, it would depress American production and further increase inflationary pressures on energy that ripple throughout the entire economy. We are working to increase production but are struggling to obtain capital because of activism from the very organizations and minority investors that are promoting this rule.

We take issue with the suggestion on page 21362 that, “...an energy company might discuss how, due to actual or potential regulatory constraints, it intends to take advantage of climate-related opportunities by...reducing its medium and long range fossil fuel exploration and production...” SEC is encouraging oil and natural gas companies to voluntarily reduce production, revenue, and returns to investors in order to meet voluntary greenhouse gas (GHG) reduction goals.

Further, unless the demand for petroleum energy is correspondingly diminished, the US and its consumers will acquire petroleum that is produced elsewhere in the world, and almost certainly in much less clean fashion. The US produces the cleanest barrels in the world, and ramping up the use of crude oil produced anywhere else in the world in response to falling US domestic production is a net negative in terms of rising greenhouse gas emissions, which as you know is a global measurement, not a country-by-country measurement.

It must also be said that greenhouse gas emissions in the United States have been declining steadily for nearly 30 years in terms of total emissions, per capita emissions, and the US share of global emissions. That the United States can dramatically increase petroleum production and consumption while at the same time reducing greenhouse gas emissions significantly and steadily negates the need for much of the content included in this proposed rule.

Clearly SEC has gone far afield from its mission of capital formation to assuming an air quality role. The rule could not come at a worse time, as it is abundantly clear America needs to increase production of oil and natural gas to reduce prices for Americans and our allies in Europe and across the globe. SEC

assumes it is a given that a net-zero or low-carbon transition is the goal. While we are agreed in the oil and natural gas industry that lowering GHG emissions is necessary to address climate change, it is by no means true that America is agreed on an agenda of net-zero if it is defined as the elimination of oil and natural gas. Activist groups have been able to convince neither the American people nor the majority of their representatives in Congress to stop using our products before a viable alternative is found, as it would mean fundamentally altering their healthy, safe, and prosperous lifestyles.

If the intention of the rule is to bring about a carbon-constrained world where GHG emissions becoming limiting to the growth of oil and natural gas companies because they have a carbon “budget” they cannot exceed, then the lack of legal authority becomes even more acute. SEC has neither the authority to regulate a reduction of GHGs nor to assign carbon limitations to companies. Without Congress passing climate change legislation that codifies such policies, SEC cannot be used as a substitute to do so.

The Proposal requires the disclosure of three “Scopes” of emissions: (1) “Scope 1” emissions occur from sources directly owned or controlled by the company; (2) “Scope 2” or “indirect” emissions derive from the activities of another party, such as the generation of electricity purchased and consumed by the company; and (3) “Scope 3” emissions are all other indirect emissions generated from sources that are neither owned nor controlled by the company, including emissions occurring from upstream and downstream activities and goods. Compliance with disclosure requirements of Scope 3 emissions may be difficult and could impose considerable costs on issuers. The resources required to collect, quantify, and ensure the accuracy of Scope 3 data may be significant, not just in terms of the volume of required information but also because of the liability risk that companies face for inaccuracies in their disclosures. Indeed, the liability risk could be particularly elevated for Scope 3 emissions disclosures, which must rely on data generated from sources that are neither owned nor controlled by the reporting company. For instance, a company may have to disclose upstream emissions from purchased goods, capital goods, fuel and energy-related activities, transportation and distribution, waste generated in operations, and even business travel, employee commuting, and leased assets. Downstream emissions subject to disclosure could include processing of sold products, end-of-life treatment of sold products, leased assets and franchises, and transportation and distribution activities.

SEC claims that the main function of the rule is to provide standardized climate-related information so that investors can compare risks among companies. However, this rule requires information standardized in name only, especially with regard to Scope 3 emissions. Because any one company’s Scope 3 emissions permeate among potentially many hundreds or even thousands of companies and millions of consumers, they are nearly impossible to accurately measure, calculate, or otherwise estimate. SEC would be requiring companies to determine emissions data that are not available from their suppliers, who may or may not have to report to SEC. If large SEC filers start to require such data from all their suppliers, they would be acting as agents of SEC to compel companies not subject to this rule to report. The rule would incentivize SEC filers to favor large suppliers who have the wherewithal to calculate and provide their emissions while disfavoring small suppliers that cannot.

SEC has not considered this impact of the rule on small businesses. While it is true that smaller, privately held companies are not subject to this rule directly, gathering information for Scope 3 (or even Scope 2)

emissions may require public companies who are subject to the rule to unduly burden smaller private companies in their supply or value chain. Assuming the requirements for reporting on Scope 2 and Scope 3 emissions remain in the rule, the Commission should incorporate language to ensure that companies who are not directly subject to the rule should in no way be *indirectly* subjected to the rule.

We have great concerns about the inclusion of Scope 3 in the rule at all. The inclusion of the Scope 3 section takes extraordinary liberties with the charge of the SEC to ensure the disclosure of information that is considered “material” by the issuer and renders the concept of materiality unrecognizable. Materiality appears to currently be defined thusly: “an omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.” It is difficult to see how the broad and disparate range of information that could be disclosed under Scope 3 could be considered material under the long-standing concept of materiality in the disclosures of public companies. Thus, in our view, Scope 3 should be removed from the proposed rule.

Further, SEC is proposing GHG reporting that goes even further than what is required under Clean Air Act (CAA) regulation. SEC lacks the technical expertise of the Environmental Protection Agency (EPA) yet is requiring vastly more emissions data than even the agency granted authority by Congress to regulate air quality seeks to request but with none of the rigor of the CAA nor technical guidance.

SEC promotes its rule to provide standardized data without providing any means to actually acquire standardized data. Oil and natural gas companies that emit GHGs above the 25,000 million metric ton threshold set by EPA must already report their emissions under the GHG Reporting Program (GHGRP) §229.1504. Generally, the public companies subject to SEC’s proposed rule are of the size that also report to the GHGRP. Rather than assuming EPA’s regulatory authority and duplicating its reporting program, SEC should simply require companies to report the same emissions numbers reported to EPA. For the oil and natural gas industry, that would be 40 CFR Part 98 Subpart W 98.230-98.232. SEC should not be requiring collection and reporting of Scope 1 emissions outside EPA’s GHGRP program. Financial markets have already been distorted by activist pressure and Americans are paying high energy prices because of underinvestment in the oil and natural gas industry. SEC should not contribute further to this destabilizing situation, but rather should withdraw this rule.

The SEC is stepping far too aggressively into a rapidly evolving arena too soon. Information on companies’ actions to address their ESG responsibilities is growing rapidly each year. At the same time the lack of a consistent framework for presenting information inhibits the value. Time is needed to allow these diverse processes to settle into a more straightforward format. The SEC proposal does not enhance the process. It merely creates still another burden. Moreover, by adding the materials as part of an SEC filing, it creates inappropriate liability for essentially speculative information. That liability will be utilized by anti-fossil energy lobbyists to pursue their agendas. The SEC should not position itself to transfer a private political agenda to a federal mandate.

Finally, there seems to be little doubt that the adoption of this and similar rules by the SEC will disincentivize the formation of public companies going forward and may even result in current public companies deciding to “go private.” As that happens, the agency may feel wrongly compelled to accomplish the same outcomes through other means that may affect companies who would not be

subject to the current rule, including, for example, the smaller, private, independent oil and gas companies we represent.

Thank you again for the opportunity to provide comment on SEC's proposal. We share your commitment to clean air and clean water and know that domestic production of oil and natural gas will continue to be the best way to accomplish those goals while meeting the energy needs of the United States and the world.