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June 13, 2022

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

File Number S7-10-22

The Enhancement and Standardization of Climate-Related Disclosures for Investors

This submission is provided on behalf of the Independent Petroleum Association of America (IPAA). IPAA represents the thousands of independent oil and natural gas producers and service companies across the United States. America's independent producers develop 91 percent of the nation's oil and natural gas wells. These companies account for 83 percent of America's oil production, 90 percent of its natural gas and natural gas liquids (NGL) production, and support over 4.5 million American jobs.

In addition to these comments, IPAA supports comments filed by the Chamber of Commerce, the National Association of Manufacturers, the American Petroleum Institute, the Western Energy Alliance and the American Exploration and Production Council.

### **General Statement**

The Securities and Exchange Commission (SEC) argues that its objective in this proposal is providing the "material" investor with essential information to inform investment decisions. The SEC describes its rationale in the proposal:

Having considered the public feedback and the staff's experience with climate-related disclosures, we believe that the current disclosure system is not eliciting consistent, comparable, and reliable information that enables investors both to assess accurately the potential impacts of climate-related risks on the nature of a registrant's business and to gauge how a registrant's board and management are assessing and addressing those impacts. The Commission has broad authority to promulgate disclosure rules that are in the public interest or for the protection of investors and that promote efficiency, competition, and capital formation. In light of the present and growing significance of climate-related risks to registrants and the inadequacies of current climate disclosures, we are proposing to revise our rules to include climate-related disclosure items and metrics to elicit investment decision-useful information that is necessary or appropriate to protect investors.

We also believe that enhanced climate disclosure requirements could increase confidence in the capital markets and help promote efficient valuation of securities and capital formation by requiring more consistent, comparable, and reliable disclosure about climate-related risks, including how those risks are likely to impact a registrant's business operations and financial performance. The proposed requirements may also result in benefits to registrants, given existing costs to registrants that have resulted from the inconsistent market response to investor demand for climate-related information. In this regard our proposal would provide registrants with a more standardized framework to communicate their assessments of climate-related risks as well as the measures they are taking to address those risks. At the same time, we are open to exploring ways in which registrants could be afforded flexibility in making the necessary disclosures while still providing appropriate consistency and comparability, and are seeking comment in that regard.

These are lofty objectives. But the fundamental questions remain: do these requirements cost effectively achieve this objective and, more broadly, is this a sound objective for the SEC to pursue?

The SEC rationalizes its venture into climate reporting based on pressures it has received from investor interest groups. Many of these have a history of opposing investment in fossil energy. Their arguments that more information is needed to enable material investors to have the ability to make sound investments rings hollow. In reality, these operations have little interest in investing in fossil energy or companies that use fossil energy; rather, they seek to prevent investment.

The recent history of BlackRock is illustrative. BlackRock has clearly pressed the SEC to move into the climate arena and the SEC mirrors much of the BlackRock mindset in its proposal. In 2020, BlackRock aggressively marketed its move to emphasize "sustainability" in its investment choices and in its actions to pressure companies where it held investments. Sustainability in this context is largely a euphemism for abandoning investment in fossil energy. BlackRock in its public statements lauded its efforts to join a variety of international efforts to support sustainable investments – several of which are referenced by the SEC – as well as its wide use and advocacy of corporate ESG (environment, social and governance) reports. BlackRock drew praise for its positions from several environment groups, such as The Sierra Club – an organization committed to the elimination of natural gas and oil as energy sources. But, the BlackRock euphoria for its enlightened sustainability policies suddenly curbed when fossil energy states, such as Texas, with large public funds that are invested with BlackRock and others in the SEC lists of advocates for its climate proposal began to move to divest those investments from companies that were rejecting fossil energy. Now, in 2022, BlackRock is attempting to convince these states of its recognition that fossil energy investment is essential to meet America's economic needs. Whether BlackRock will succeed is an open question.

But, what then of its agenda to use ESG and other sustainability tests to expand the transparency of corporate actions? Clearly, part of that agenda is being transferred to the federal government through the SEC and other agencies in initiatives to limit access to capital for the essential development of American fossil energy. This SEC proposal allows the previously private actions to be shifted to the government, pushing them into a regulatory domain with

consequences. If the SEC finalizes the proposal in play, the voluntary transparency disclosures become government mandates.

At issue then, is whether the SEC initiative is either necessary or appropriate. The SEC's assessment of information related to climate reporting demonstrated the extensive scope of current widespread efforts to provide publicly available information on industrial efforts to address climate issues. Delving into the material described in the SEC proposal shows that numerous approaches to generate climate transparency information exist. At the same time, it shows that developing a consensus approach to providing information does not exist. Several different international entities have been formed to create approaches but no single format has been adopted. In the United States, a number of key organizations have tried to create a common ground to put order into the ESG transparency efforts rather than have companies pick among them or use all of them to then produce confusing results. In 2020, the IPIECA, the American Petroleum Institute (API), and the International Association of Oil & Gas Producers (IOGP) released a new edition of the *Sustainability reporting guidance for the oil and gas industry*, which marked over fifteen years of collaboration between the member companies across the three leading industry associations. Notably, this consensus document is not referenced in the SEC proposal materials.

While the development of transparency information cries for more consistency, more consensus, it is abundantly clear that the SEC proposal fails to solve that challenge. Instead, it merely adds another reporting form at great cost. Only, with this effort, the additional burden comes with a new cost – legal liability. If anything is clear in the world of ESG, it is the recurring criticism that no amount of information is adequate. If the SEC thinks that its new demand for mountains of more information will improve this dynamic, it is sadly mistaken. Instead, it will open a door for the anti-fossil energy lobby to challenge whatever material is supplied and seek legal ramifications under SEC's aegis.

### **Oil and Natural Gas Production Issues**

The oil and natural gas production industry is somewhat uniquely affected by the SEC climate reporting proposal. First, like most industries, it has emissions that must be reported and controlled. Second, its products provide the key fuels that are essential to the execution of a strong American economy and the world's energy supply, as well as numerous essential products in modern society. America's shareholder owned oil and natural gas production companies recognize the importance of managing their carbon emissions, including volatile organic compounds (VOC), methane and carbon dioxide (CO<sub>2</sub>). These companies have spent millions of dollars complying with state and federal emissions regulations and in voluntary programs, such as The Environmental Partnership. These companies are similarly engaged in developing and reporting information on their ESG efforts to continue to manage their climate related impact. But, it is equally clear that any competent material investor understands that these companies will have an impact and must address them accordingly.

The nature of these emissions is twofold. First, oil and natural gas production generates direct emissions (the so-called Scope 1 and Scope 2 emissions). Of these, Scope 1 emissions are more clearly understood. These arise from their drilling and production operations. They are primarily methane and VOC releases. In recent years, these emissions have been the target of aggressive attacks on the industry by various anti-fossil energy lobbyists and they have been subject to an array of state and federal regulations, with more being developed. However, the oil

and natural gas production emissions amount to less than 2 percent of the U.S. Green House Gas Inventory (GHGI). In addition to methane and VOC releases, the industry releases CO<sub>2</sub> related to flaring of waste gases and use of combustion equipment.

Second, oil and natural gas production yields the essential fuels that predominantly power the nation and the world, fuels that have created modern economies. These fuels will continue to be essential for decades to come even as society moves to expand other energy options to meet current and future demand. Yet, these oil and natural gas products are also essential as feedstocks for critical products ranging from fertilizer to pharmaceuticals to sophisticated polymers and plastics used in electronics, buildings and other consumer products. Determination of the so-called Scope 3 emissions from this industry will be speculative at best given the breadth of product use and the mix of options that each user can create.

The SEC climate reporting proposal largely creates three areas of information that must be addressed by oil and natural gas producers:

1. Physical risk;
2. Transition risk; and,
3. Emissions.

Each of these poses serious issues regarding the preparation, validity and potential for abuse of the information.

#### *Physical Risk*

The SEC proposal would require:

...a registrant to include in its description of an identified physical risk the location of the properties, processes, or operations subject to the physical risk.

The proposal would require disclosure of climate-related risks and impacts across short, medium and long term time horizons, but the SEC does not propose what those time horizons would be. The SEC proposal then uses examples of physical risk like flooding or fire, but it does not provide a framework for what climate related scenario should be used to create the assumptions for these or other physical risks.

For oil and natural gas production companies, the locations of their operations are routinely changing. Their operations are characterized by regular revisions. New wells must always be developed to maintain and grow production as older wells naturally decline. Companies regularly sell some properties and buy others to consolidate operations or move into different fields. All of these decisions occur as a result of determinations that respond to business conditions and technical evaluations.

While a current assessment of physical risk could be made, assessing risk for long term or even medium term is problematic at best because property locations will likely shift. Certainly, some producers expect to be in the Permian Basin or the Gulf of Mexico for long periods of time, but these are unlikely to be their only operations.

Similarly, determining the nature and scope of physical risks depends on the assumptions that are used to assess the magnitude and type of climate related events. There is a wide array of assumptions that can be used to develop climate risk scenarios; it is an inexact science. The SEC proposal does not identify a particular scenario thereby leaving the decisions to each company. By doing so, it opens the company to being challenged regarding its basis for its choice.

It is clear that the anti-fossil energy lobby will compare companies' reports and use their differences to challenge the reports. The SEC will then need to determine which reports it supports and which it does not. This creates a legal liability solely based on the use of reasonable differences in interpretations. Moreover, it does not clarify the uncertainties in developing information for material investors that the SEC argues are the purpose of its proposal.

### *Transition Risk*

The SEC proposal defines transition risk as:

...the actual or potential negative impacts on a registrant's consolidated financial statements, business operations, or value chains attributable to regulatory, technological, and market changes to address the mitigation of, or adaptation to, climate-related risks. Transition risks would include, but are not limited to, increased costs attributable to climate-related changes in law or policy, reduced market demand for carbon-intensive products leading to decreased sales, prices, or profits for such products, the devaluation or abandonment of assets, risk of legal liability and litigation defense costs, competitive pressures associated with the adoption of new technologies, reputational impacts (including those stemming from a registrant's customers or business counterparties) that might trigger changes to market behavior, changes in consumer preferences or behavior, or changes in a registrant's behavior.

As with physical risk, the SEC proposal wants assessments in the short, medium and long term time horizons but does not propose what those horizons are.

Again, these projections will become part of a company's filing with the SEC that creates a liability. Yet, projecting regulatory, technological and market changes across time is virtually impossible to do with accuracy. No projection in 2019 would have included a COVID pandemic or a Russian invasion of Ukraine. Energy demand projections over time have consistently been limited with respect to both total supply and demand and segment supply and demand.

Regarding market changes, a company is faced with conflicting options. If it relies on the U.S. Energy Information Administration (EIA) Annual Energy Outlook, it would conclude that natural gas and oil demand will continue at current levels or even increase depending on export levels. However, if it relies on political statements by governments that fossil energy will be eliminated in large measure, it could conclude that future demand could be less. For an oil and natural gas producer these demand issues are largely related to fuels generated downstream of its operations as a result of decisions out of its control. For example, what is the future for transportation fuels? Currently, there about 280 million cars and trucks in the American fleet, overwhelmingly gasoline or diesel fueled. Historically, from 15 to 17 million new vehicles are sold annually. In 2021, about 630,000 of these were electric vehicles. At issue is whether electric vehicle demand will grow dramatically as automobile manufacturers commit to shifting production to electric vehicles and states limit sales of new gasoline powered vehicles. However, this demand is contingent on vehicle fleet turnover that requires current gasoline powered vehicle owners to sell their vehicles and purchase electric vehicles, including used electric vehicles. These are vehicle sales that will substantially depend on lower income individuals being willing to part with a vehicle with known performance characteristics. Additionally, as the number of electric vehicles grow, more electricity will be needed and it may depend on natural gas. The SEC offers no guidance on which paths the country will take but it

expects individual oil and natural gas producers to foresee the path and hold them legally liable for that vision.

Regulatory prediction is equally complex. As the last fifteen years has shown, energy and climate policies can swing dramatically. And, even when the Biden Administration explicitly initiates efforts to forbid oil and natural gas development on federal lands, it finds that the law fails to give it that authority. Certainly, an administration can manipulate the leasing and permitting process to inhibit development, but the next administration may choose to reverse that course. Again, the SEC offers no guidance but expects the producer to divine what the future regulatory path will be and holds it liable.

Technological changes follow the same path. If carbon capture and sequestration (CCS) grows to be an effective operation to reduce CO<sub>2</sub>, the future for fossil energy brightens. If battery design fails to improve battery performance or if critical elements availability for battery construction is limited by mining constraints or political actions, the growth of electric vehicles will fall short of current expectations. Again the SEC offers no guidance, no framework, but expects individual oil and natural gas producers to be able to assess the outcomes and hold them liable for their conclusions.

As with the physical risk determinations, SEC effectively invites the anti-fossil energy lobby to delve into the individual company filings, find differences, and exploit those to challenge filings and demand SEC action against the companies. While it may be great theater, it does nothing to further the understanding of climate risks for the material investor.

### *Emissions*

The SEC proposal requires oil and natural gas producers to develop emissions estimates for their Scope 1 and Scope 2 emissions and, in some cases, their Scope 3 emissions. These comments will focus on Scope 1 emissions because they have been an issue in other settings and will continue to be.

Emissions from oil and natural gas production operations come from valves, flanges, seals and other components. Some are necessary such as safety equipment to protect against excessive pressuring of equipment; others are leaks referred to as fugitive losses. Newer facilities are designed to limit these releases or capture them. Regardless, these emissions cannot currently be continuously measured. Consequently, emissions are estimated using an array of emissions factors that have been developed in the past. Most of these emissions factors are based on a limited number of samples in the mid-1990s. They were subsequently adopted by the Environmental Protection Agency (EPA). Currently, they are used to estimate Green House Gas emissions under Subpart W. They have also been used in the development of EPA regulations under the Clean Air Act. EPA has indicated that it will be reviewing Subpart W and the other industry reporting subparts in an upcoming rulemaking.

Over the past decade, these emissions factors have been scrutinized more closely. When the GHGI was first developed, it had no specific use other than to provide a broad understanding of U.S. emissions. Since those initial efforts, as the intensity around managing GHG emissions has increased, the GHGI has also drawn a more intense review. For example, environmental lobbyists have produced reports that delve into individual company submissions, ranking them, and suggesting that the companies are failing to manage their operations properly. As a result the quality of the emissions factors becomes more crucial.

For example, one emissions source at oil and natural gas production facilities are emissions related to the use of pneumatic controllers. Historically, because many oil and natural gas production facilities are remote and have limited access to electricity, facilities utilized a slipstream of raw gas to operate pneumatic controllers. This gas was then bled off as the valves moved. There are different types of pneumatic controller – high bleed, low bleed and intermittent bleed. Emissions factors were developed for each type. Many facilities use intermittent bleed controllers – meaning that they bleed only when in use. However, the emissions factor was developed based on only 19 controllers; its accuracy has been questioned. Moreover, the emissions factor is relatively high. Subsequent studies by EPA and the Oklahoma Independent Petroleum Association (now the Petroleum Association of Oklahoma) produced emissions factors on the order of one percent of the Subpart W factor. Nevertheless, Subpart W continues to use the high factor.

As a result, when environmental lobbyists probe the GHGI for emissions reports, they find some facilities with many intermittent pneumatic controllers that report higher emissions. It is, of course, their intent to profile these reports to attack these facilities. But, since EPA has not altered the emissions factor, there is little that can be done to alter the outcome of these reports.

Perhaps, more importantly, in the context of the SEC proposal, there are really no alternatives to the Subpart W reporting emissions factors. As the SEC observes in its proposal, these EPA reports are required and any alternative would face a considerable threshold to be accepted and attested as a part of an SEC filing.

It is equally important that SEC does not try to expand on the current reporting system. The current system requires reporting on all of a company's facilities in any basin where it emits 25,000 tons/year of CO<sub>2</sub>eq (1,000 tons/year of methane). This can create limited circumstances where a company may not report in all of its basins if it has minor operations in some basin. However, for SEC's purpose a material investor does not need more extensive reporting. It would merely compel greater costs on the producer without any useful benefit.

Since this information is already publicly available through the EPA, the larger question is why SEC would require it from oil and natural gas producers. Any competent investor can readily find emissions information on the EPA website. What will happen if SEC requires the information to be additionally filed with the SEC will be that the anti-fossil energy lobby will try to use it to harass companies in a different forum and seek ways to impose new liabilities.

### **SEC Should Withdraw Its Proposal**

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.

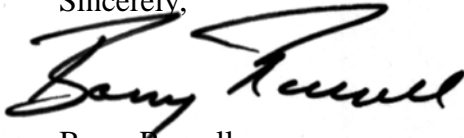
The SEC proposal does not enhance the process. It merely creates still another burden. Moreover, by adding the materials as part of an SEC filing, it creates inappropriate liability for essentially speculative information.

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.

If the SEC continues to pursue an agenda to provide information to investors on company ESG activities and emissions, it should request that existing public documents be furnished to the SEC with other materials and make them available.

IPAA appreciates the opportunity to provide comments to the SEC on this important issue. If there are any questions, please contact Dan Naatz at the above address or at [dnaatz@ipaa.org](mailto:dnaatz@ipaa.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Barry Russell". The signature is fluid and cursive, with a large initial "B" and "R".

Barry Russell  
President and CEO