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

Via email: rule-comments@sec.gov

June 17, 2022

RE: File Number S7-10-22 - The Enhancement and Standardization of Climate-Related Disclosures for Investors: 87 FR 21334

Dear Ms. Countryman,

The Association of Equipment Manufacturers (AEM)[1] appreciates the opportunity to provide risk-based comments, in response to the Securities and Exchange Commission (SEC's or Commission's) request for industry input on climate-related financial disclosure. AEM would also like to thank the Commission for extending the comment period to June 17, 2022.

The Enhancement and Standardization of Climate-Related Disclosures for Investors[2] is a key control for "greenwashing[3]," which introduces an increased amount of regulatory, operational, and legislative risks associated with the Securities Act of 1933 ("Securities Act") and Securities Exchange Act of 1934 ("Exchange Act"). Our risk assessment shows; however, that the proposed rule would increase residual risk as smaller manufacturers within the supply chain, who the rule will indirectly impact, struggle to comply with accurate monitoring and timely reporting to larger manufacturers, reporting greenhouse gas (GHG) metrics to the SEC.

In a coordinated effort with our member companies and the manufacturing industry, AEM has completed a risk assessment of the proposed rule and corresponding risk areas. We are proposing alternative solutions to the proposed rule, which better protect environmental,

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[1]AEM is the North American-based international trade group representing heavy-duty off-road equipment manufacturers and suppliers with more than 1,000 member companies and over 200 product lines in the construction, agriculture, mining, forestry and utility industries. The equipment manufacturing industry in the United States supports 2.8 million jobs and contributes roughly $288 billion to the economy every year. Our industries remain a critical part of the U.S. economy and represent 12 percent of all manufacturing jobs in the United States. Our members develop and produce a multitude of technologies in a wide range of products, components, and systems that ensure heavy-duty off-road equipment remains safe and efficient, while at the same time reducing carbon emissions and environmental hazards. Finished products have a life cycle measured in decades and are designed for professional recycling of the entire product at the end of life. Additionally, our industry sectors strive to develop climate friendly propulsion systems and support robust environmental stewardship programs around the world.

[2]87 Federal Register 21334, Apr. 11, 2022.

[3]OECD analyzed different rating providers, such as Bloomberg, MSCI and Refinitiv and found wide differences in the ESG ratings assigned, with an average correlation of 0.4. When OECD analysis then compared ESG ratings with the issuer credit rating by major providers, it found that credit scores for selected issuers vary much less. See also International Monetary Fund, Global Financial Stability Report (Oct. 2019), available at *https://www.imf.org/en/Publications/GFSR/Issues/2019/10/01/global-financial-stability-report-october-2019*.

social, and governance (ESG) investors, while simultaneously reducing regulatory, operational, and legislative risks to manufacturers. One of AEM's goals is to provide safety, environmental, and global compliance programs for the equipment manufacturing industry. This includes helping our member companies navigate sustainability risk assessments, access the tools for keeping accurate books/records, and reporting accurate data to regulators.

Regulatory Risk:

AEM respects the Commission's findings: "academic research finds that assurance procedures can increase the relevance and reliability of disclosures, particularly for those involving significant estimation uncertainties."[2] However, reasonable assurance pursuant to an audit, significantly increases regulatory risk for manufacturers and could result in penalty for companies, already putting forth best efforts to monitor and report on GHG emissions.

On behalf of our member companies, AEM recommends expanding the definition of "good faith" reporting already in the rule and extending the period of "no assurance" reporting for five years. This will allow companies to adjust to new reporting regimes, without risk of litigation, brought on by audit detecting inaccuracies in data due to companies developing new systems for monitoring and reporting.

Operational Risk:

AEM recently hosted the 2022 Product Safety & Compliance and Product Liability Seminars[4] in Illinois, where 398 representatives from 89 equipment manufacturing companies discussed scope 1, 2, & 3 emissions reporting, full material disclosure (FMD), and risk assessment. We learned that operationally, manufacturers deal with a multi-tiered supply chain, which poses significant challenges when reporting upstream and downstream GHG emissions. Specifically, this makes accurate scope 3 emissions reporting challenging for some and nearly impossible for most.

AEM recommends the strengthening of existing "safe harbors" for smaller reporting companies (SRCs), non-accelerated, and non-publicly traded companies, which this rule will indirectly impact. Moreover, we recommend reporting exemptions, for scope 3 emissions. Technology is critical here, as we continue to deal with compliance regimes which are new to reporting GHG emissions for scopes 1, 2, and 3. Exemptions for scope 3 emissions will become important to allow time for new technologies to improve reporting and to allow for smaller companies to gain access to new technologies for monitoring. This will decrease the operational risk associated with reporting direct emissions and indirect (limited control) emissions.

Legislative Risk:

AEM understands that internal audit is a pathway towards accurate reporting of GHG metrics. Regulation S-X[6] of the Securities Act outlines reporting requirements for various SEC filings used

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[4]2022 Product Safety & Compliance and Product Liability Seminars. https://www.aem.org/events/conferences-and-webinars/product-safety-compliance-product-liability

by public companies. This is usually a function of accounting and audit within manufacturing firms. Forms, on which the SEC is proposing manufacturers put emissions data, are audited for "fraudulent reporting" regularly. This could lead to a significant increase in legislative risk which is essentially the intrinsic point of this proposed rule.

AEM recognizes the goal of reporting accurate metrics and timely data associated with GHG emissions. Therefore, AEM recommends ESG reporting be done on marketing materials regulated under FINRA 2210. Communications with the Public[5]; Form 10-K, Quarterly Reports on Form 10-Q, and/or Current Reports on Form 8-K statements. Adding "Article 14" to Regulation S-X (17 CFR 210.14-01 and 02) correlating climate disclosure to a registrant's audited financial statements would only increase residual risk for companies and liability for manufacturers.

First, auditors do not have the tools to verify Scope 3 emissions disclosed on the financial statement (especially with a 20-tier manufacturing supply chain). Second, if the goal is to pour money into the pockets of consulting firms by increasing the need for external audit, then this rule achieves that goal as written. However, if the goal is to disclose ESG metrics, which protect investors from "greenwashing" and other forms of "misleading information," then investors should be able to see metrics reported by companies firsthand through the prospectus (or other marketing materials) regulated by FINRA 2210.

Historically, the Commission's review process is not a guarantee that a company's disclosure is complete or accurate, and the Commission "does not evaluate the merits of any IPO or determine whether an investment is appropriate for any investor."[7] To decrease greenwashing risk for the investor and legislative risk for the manufacturer, the Commission should consider adding this language, allowing enterprise compliance to instead focus on marketing materials review and not on whether metrics yield limited or reasonable assurance.

We look forward to continued engagement with the Commission on this process and are at your disposal for additional information and support. Please contact Johnathan Josephs, Regulatory Affairs Manager, at [redacted] if you have any questions or would like to discuss our response.

Warmest Regards,

Johnathan Josephs, MSL
Manager, Regulatory Affairs
Association of Equipment Manufacturers (AEM)

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[5]FINRA 2210. Communications with the Public https://www.finra.org/rules-guidance/rulebooks/finra-rules/2210
[6]Consolidated financial statements are subject to audit and may require principal accountants to expand the scope of their audits. https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm
[7]Investor Bulletin. https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins-17