June 06, 2022

The Honorable Gary Gensler
Chairman
US Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

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

Dear Chairman Gensler:

I appreciate the opportunity to provide the US Securities and Exchange Commission comments on its proposal entitled "The Enhancement and Standardization of Climate-Related Disclosures for Investors" (the "Proposed Rule"). I currently serve as CEO of Canary, one of the largest privately-owned oilfield services companies in the United States. Based in Denver, Colorado, Canary provides comprehensive oilfield drilling and production services in every major shale play, including Bakken, Niobrara, Utica, and the Permian Basin. Canary traces its history back to 1984 with the opening of Canary Wellhead in Oklahoma City. Since then, the company has grown to provide a range of services to companies of all sizes, including a strong API manufacturing arm to fill custom service needs for clients in a fast and innovative way.

As the Commission is undoubtedly aware, today, our economy is faced with historic energy supply challenges. After a decade of underinvestment in the oil and gas sector, current domestic output sits well off pre-pandemic levels while demand returns to normal. US consumers face the reality of summer travel season with the price of gasoline above $6 a gallon, and crude oil prices are expected to remain well above $100 a barrel due to supply constraints across the global market. I have serious concerns that this proposed rule will further diminish the energy security of the United States and drive higher costs for businesses and consumers.

The proposed rule, which follows a pattern of hostility from the Biden administration toward the US oil and gas industry, will further cripple the sector and its ability to meet the energy needs of US consumers. The requirement that a company accounts for any greenhouse gases emitted along their supply chains and the use of their products is a burdensome standard that will disproportionally affect domestic energy producers, including the financial institutions that underwrite the sector.

While there is legitimate justification for firms to disclose emissions from their own immediate operations, the Scope 3 reporting proposed in the rule and other burdensome reporting will place the responsibility and pressure to mitigate economy-wide emissions solely on the oil and gas industry. These requirements, however, will do nothing to address the underlying demand in the economy for the products they produce.

I strongly urge the Commission to reconsider the proposed rule and, if at all, pursue a path forward on climate disclosure that works with the appropriate federal agencies of jurisdiction in the area, primarily the Environmental Protection Agency.

I organize the remainder of my comment around three main concerns for the Commission to consider: first, the scale of the current energy supply shortage facing the US; second, how the proposed rule, if operationalized, would impair domestic oil and gas producers; and third, how an impaired US oil and gas sector will harm both the economy and the administration's broader climate goals.

I. Current Energy Supply Shortages

Nearly two years of hostile policy toward the oil and gas sector from the Biden administration, coupled with the growing influence of Environmental, Social, and Governance (ESG) investment funds that typically shun oil and gas industry stocks, have precipitated the supply crunch currently affecting US energy markets.

Since taking office, President Joe Biden has sowed doubt in the domestic energy landscape by freezing new leasing projects and pipelines, discouraging the investment necessary to explore, develop, and produce the energy America needs to prosper and be secure. His administration has proposed eliminating a slew of tax benefits for oil, gas, and coal producers in favor of electric vehicles and other low-carbon energy alternatives as part of a $6 trillion budget for this fiscal year. At the same time, his allies in Congress also recently proposed a 50% tax per barrel of oil on the price difference between the current market price and the average cost between 2015 and 2019. [1] These moves create a turbulent investment environment for US domestic producers, even as the Biden administration has openly called for foreign producers to increase production to alleviate global supply problems.

In a parallel trend in the capital markets, the growth of environmental, social & governance funds (ESG) has also chilled investment in the sector. A report last year from the International Energy Forum estimates that 2021 oil and gas production remained 23 percent below the pre-pandemic level of $525 billion, while investment slumped by 30 percent in 2020. [2] The report identified ESG investing as one of three principal drivers of this underinvestment. That is a predictable result as nearly $2.7 trillion of investment capital now sits in ESG funds that limit investment in the oil and gas producers. [3]

Those factors have combined to restrain American oil production, which now sits around 11.6 million barrels per day compared to its peak in 2019 of 13 million per day. [4] Structural underinvestment has hampered capital-intensive activity across the upstream, midstream, and downstream sectors of the oil industry. Less than a decade ago, there were 1,600 active drilling rigs in the country. Today, there are 519. [5]

These policy choices to constrain supply directly affect American consumers, with high prices now stretching across all critical energy categories. Total US gasoline inventories of around 220 million barrels are about 8 percent below the five-year average for this time of year, driving current high prices

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[1] See Dan Eberhart, "A timeline of Biden's actions on oil and gas reveal where his priorities are," *Fox Business*, (March 29th, 2022) https://www foxbusiness.com/energy/timeline-biden-actions-oil-gas-priorities

[2] See IEF, *Deepening Underinvestment in Hydrocarbons Raises Spectre of Continued Price Shocks and Volatility* (December 2021) https://www.ief.org/news/deepening-underinvestment-in-hydrocarbons-raises-spectre-of-continued-price-shocks-and-volatility

[3] See Saijel Kishan, "ESG by the Numbers: Sustainable Investing Set Records in 2021," *Bloomberg* (February 2022) https://www.bloomberg.com/news/articles/2022-02-03/esg-by-the-numbers-sustainable-investing-set-records-in-2021

[4] See Benjamin Storrow, "Just how much oil can the US pump?," *EE News* (March 2022) https://www.eenews net/articles/just-how-much-oil-can-the-u-s-pump/

[5] See Jessica Resnick-Ault, "Oil drillers dig for the bottom for rig counts," Reuters (May 2016) https://www reuters.com/article/usa-rigs-counts-idCNL2N1822CS

heading into the summer. The situation with diesel fuel is even worse. Retail diesel prices are around $5.70 a gallon, which are already 75 percent higher than a year ago. [6]

As the Commission imposes its rulemaking authority on matters of national climate and energy policy with this proposal, it must recognize we are facing one of the worst supply challenges in a generation.

II. How the Rule Proposal Will Further Restrict Capital to the Sector

It's clear to industry participants that compelling different kinds of costly environmental data, including Scope 1, 2, and 3 emissions data, climate scenario analyses, transition plans, climate-related financial impacts on the company financial statement, and emissions reductions plans will have a practical effect on markets beyond just "disclosure." These requirements will deliberately steer away resources and funding from the oil and gas sector.

Proponents of the rule at the Commission have already spoken to the proposal's intent to steer private capital flows away from industries disfavored by climate advocates. In a speech before the United Nations supported Principles for Responsible Investment in October of last year, for example, Commissioner Allison Herren Lee noted that the rule proposal "can more broadly inform the wider spectrum of climate policymaking – policymaking that deserves incisive, informed, and - importantly - swift attention." [7]

Other widely adopted voluntary corporate disclosure frameworks have been clear that the goal of disclosure itself is to marshal capital towards ESG goals. The Task Force For Climate Related Financial Disclosures (TCFD), which is the core framework the Commission has modeled its proposal on, lists publicly that its stated purpose is to "empower[] the markets to channel investment to sustainable and resilient solutions, opportunities, and business models." [8]

The proposal will achieve these aims immediately through its high costs to the oil and gas sector, particularly from the cost of calculating Scope 3 emissions. In the proposal, the Commission estimates as much as 40% of a company's emissions might be attributed to its consumers and suppliers, [9] but Scope 3 is both a poorly defined and difficult to calculate metric. As producers of the bulk of the United States' energy usage, oil and gas companies will be tasked with calculating and internalizing the subsequent emissions costs of the economy writ large. While raising costs for oil and gas companies may give activists and sustainable finance professionals the façade of achieving their ESG goals, no meaningful changes will have been made to consumer demand for these products. The energy supply will simply draw down as companies bear these additional reporting and measurement costs.

Furthermore, mandatory disclosure will drive the shift in investment flows by providing ESG funds regulatory cover to prioritize "environmental sustainability" over economic returns for investors when ranking funds. Many asset managers have told the SEC in public comments before the proposal that they intend to use new climate data to transition investment away from energy portfolio companies that

[6] See Dan Eberhart, "Consumers Should Brace For Cruel Summer At Gas Pumps," *Forbes* (May 2022) https://www forbes.com/sites/daneberhart/2022/05/25/consumers-should-brace-for-cruel-summer-at-gas-pumps/?sh=20e83b4f7117
[7] See Commissioner Lee remarks to the PRI (October 20, 2021) https://www.sec.gov/news/speech/lee-remarks-prilseg-investor-action-climate-webinar-102021
[8] See Task Force on Climate-Related Financial Disclosures, https://www.fsb-tcfd.org/about/ (last visited April 26, 2022).
[9] Proposing Release at 184

fail to address conditions of "declining demand." [10] That position seems radically out of synch with current conditions in the market.

There are also the scores of shareholders and environmental activists who intend to use the new climate data to starve energy firms of resources, including by launching costly lawsuits when climate-risk estimates made in good faith prove to be inaccurate.

Finally, there is the reality that today's disclosure will underpin more severe actions from financial regulators in the future. For example, members of the Financial Stability and Oversight Council, encouraged by a broader mandate to reduce systemic risk in the financial system, can use climate to increase the costs of borrowing capital for emissions-intensive businesses. They may also impose a cap on greenhouse gas emissions for common types of registered investment funds.

Most industry participants, investors, and policymakers are aware that the intent of this proposal is to deter investment in the oil and gas sector, regardless of whether it is explicitly stated or not. While the sector's demise may be cheered by ESG advocates, hobbling America's conventional energy sector will backfire in several ways.

III. A Weakened US Oil and Gas Sector Will Harm US Interests and the Global Fight Against Climate Change

The rule proposal, if implemented, will severely impact the ability of the oil and gas to meet present energy demand. The energy crisis facing the country today will be further exacerbated as costs pile onto energy producers present difficulties to find labor, materials, and capital needed for exploration and production efforts.

A weakened US oil and gas sector will not, however, halt forthcoming rising global energy demand, which the EIA projects will rise nearly 50% by 2050, led by growth in Asia. Instead, current policy initiatives look more likely to bring about scenarios (which the EIA also already projects to occur by next year) in which the US settles into a role as a net importer of petroleum and natural gas products despite our abundant resources here at home. [11]

Rather than tie the hands of US producers, policy should encourage US exports of cleaner natural gas and other fuels over dirtier alternatives produced by foreign competitors. The recent agreement reached between the White House and European Union for the US to deliver an additional 15 billion cubic meters (bcm) of liquified natural gas (LNG) to Europe in 2022, increasing to 50 bcm annually until at least 2030, is a case and point for this potential. In addition to handicapping Russian aggression and boosting the domestic economy, as Dan Byers at the Chamber of Commerce has recently pointed out, growing exports of cleaner fuels produced in the US can also reduce emissions sizably this decade and beyond as the wider green energy transition progresses. [12]

Supporting this analysis, a recent Department of Energy estimate found that natural gas pipelined from Russia to Europe's electricity sector has 41 percent higher life cycle emissions than American LNG

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[10] See comment from Wellington Asset Management (June 11, 2021) https://www.sec.gov/comments/climate-disclosure/cll12-8944103-245735.pdf

[11] See EIA, *EIA projects nearly 50% increase in world energy usage by 2050, led by growth in Asia* https://www.eia.gov/todayinenergy/detail.php?id=41433, EIA expects US petroleum trade to shift toward net imports during 2022, https://www.eia.gov/todayinenergy/detail.php?id=51338

[12] Dan Byers, The Energy Security and Emissions Twofer That Nobody Is Talking About, RealClear Energy (May 18, 2022) https://www.realclearenergy.org/articles/2022/05/18/the_energy_security_and_emissions_twofer_that_nobody_is_talking_about_832870.html

shipped to Europe, owing to cleaner processes used by producers in the United States. Byers calculates that if the US–EU goal of delivering an additional 15 bcm of LNG in 2022 is met, emissions would be reduced by nearly 22 million metric tons of carbon dioxide equivalent. Additionally, if the US and EU meet their longer-term target of an additional 50 bcm, that could equal the equivalent of moving 16 million cars off the road. [13]

Projected scenarios like replacing Russian LNG exports to the EU underscore the need to support our domestic oil and gas sector on climate grounds rather than seeding global production to foreign and state-owned producers who will continue to meet global demand with little regard for their environmental impact. US companies continue to reduce the environmental effects in their exploration and production processes at a significant clip, particularly around methane emissions intensity. In contrast, other leading oil producers like Russia, Iran, and Venezuela have an emissions intensity that's 30%, 85%, and 652% higher than the US, respectively.[14] Supporting US energy on the global stage, rather than inhibiting it, will avoid these unintended effects globally.

Conclusion:

While the Commission's rule proposal may be well-intentioned, requiring a prescriptive regime for emissions disclosures for public companies will weaken our country's energy security and our climate goals. The rule's costs and downstream impacts in the capital markets will further starve a US domestic oil and gas sector that stands ready to increase production to alleviate the country's current supply predicament.

As prices rise across energy categories that consumers rely on, the SEC, in its role as a financial regulator, cannot and should not move forward with a major environmental initiative without the direction of elected policymakers and agencies with environmental and energy expertise. I encourage the Commission to consider withdrawing this proposal and working more collaboratively with industry to pursue a more workable disclosure regime.

Respectfully,

Dan Eberhart
CEO, Canary LLC
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[13] See Byers.
[14] See Byers.