John D. Neumann
Vice President, General Counsel
and Secretary

[redacted]

June 17, 2022

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, NE Washington, DC 20549-1090

Re: File No. S7-10-22; Release Nos. 33-11042, 34-94478: *The Enhancement and Standardization of Climate-Related Disclosures for Investors*
Comments of NACCO Industries, Inc.

Dear Chair Gensler:

NACCO Industries, Inc. ("NACCO" or the "Company") appreciates the opportunity to furnish comments in response to the Securities and Exchange Commission's ("SEC" or the "Commission") request for public input regarding additional climate change disclosures. NACCO Industries, Inc., brings natural resources to life by delivering aggregates, minerals, reliable fuels and environmental solutions through its robust portfolio of NACCO Natural Resources businesses. The Company operates under three business segments: Coal Mining, North American Mining and Minerals Management. The Coal Mining segment operates surface coal mines for power generation companies. The NAMining segment is a trusted mining partner for producers of aggregates, coal, lithium and other industrial minerals. The Minerals Management segment acquires and promotes the development of mineral interests. Mitigation Resources of North America provides stream and wetland mitigation solutions.

Proposed Disclosure of Identified Material Climate-Related Risks

The proposed rule would "require a registrant to disclose any climate-related risks reasonably likely to have a material impact on the registrant's business or consolidated financial statements."[1] "Climate-related risks" is defined as "the actual or potential negative impacts of climate-related conditions and events on a registrant's consolidated financial statements, business operations, or value chains, as a whole."[2] Subsequently, the proposed rule provides that climate-related conditions and events can "present risks related to the physical impacts of the climate (''physical risks'') and risks related to a potential transition to a lower carbon economy (''transition risks'')."[3]

[1] 87 Fed. Reg at 21,349
[2] Id.
[3] Id.

As proposed

- ‘‘physical risks’’ is defined to include both acute and chronic risks to a registrant’s business operations or the operations of those with whom it does business.
- ‘‘Acute risks’’ is defined as event-driven risks related to shorter-term extreme weather events, such as hurricanes, floods, and tornadoes.[4]
- ‘‘Chronic risks’’ is defined as those risks that the business may face as a result of longer-term weather patterns and related effects, such as sustained higher temperatures, sea level rise, drought, and increased wildfires, as well as related effects such as decreased arability of farmland, decreased habitability of land, and decreased availability of fresh water.[5]

The proposed rule would define “transition risks” to mean 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.[6] The proposed rule would also require a registrant to disclose whether any climate-related risk is reasonably likely to have a material impact on a registrant, including its business or consolidated financial statements, which may manifest over the short, medium, and long term.[7]

Proposed Climate-Related Financial Metrics and Discussion Would Be Unduly Burdensome and Will Confuse Investors

The proposed rule would require public companies to identify all acute and chronic physical, climate related risks at the zip-code level .[8] If the aggregate impact of climate-related risks, events, and activities exceeds 1% of the value of any line item in the company’s financial statements, the proposal would amend Regulation S-X to require a company to disclose in a note to its financial statements certain disaggregated climate-related financial statement metrics and also require the company to analyze in non-financial statement disclosure the impact of all such climate-related risks, weather events, and transition activities on the company’s financial condition and results.[9]

This identification and reporting process would be unduly burdensome and unworkable, along with being time consuming and expensive. From a practical standpoint, the processes and procedures necessary to conduct the required financial statement analysis simply do not yet appear to exist. Companies would be required to separately disclose all negative and all positive impacts of climate-related events as well as separately disclose all negative and all positive impacts of transition activities. These disclosures would be required for each affected financial statement line item if, on an aggregated basis, the absolute value of all such impacts (i.e., the absolute value of both negative impacts and positive impacts for both climate-related events and transition activities) exceeds 1% of the related line item. We believe it will be difficult for registrants to identify impacts and transition activities specifically associated with climate-related events. As

[4] Id.
[5] Id at 21,350.
[6] Id.
[7] Id. at 21,351
[8] Id. at 21,467
[9] Id. at 21,363

an example, the change in an insurance premium that is directly attributable to climate may be difficult to ascertain, particularly when other factors are at play.

NACCO is unaware of any peer reviewed model or database capable of providing the required information at a regional level, much less at the zip-code level. We do not believe it is possible to objectively calculate the exact dollar amounts for many of these types of climate and weather risks. Because of the speculative nature of the reported results, the outcome will not meet the SEC's purported goal "to improve the consistency, comparability, and reliability of climate-related disclosures"[10]. Rather than arming investors to make informed decisions, the proposed rule will mandate issuers to overemphasize risk disclosure that cannot be guaranteed to be accurate and inundate their financial statements with footnotes highlighting immaterial information. The proposed footnote disclosure would be made subject to the financial statement audit and management's internal control over financial reporting. This level of expanded disclosure and assurance at such a low and potentially immaterial threshold will be difficult to obtain under the proposed reporting timeline and will require process and other changes to accurately aggregate and report the data at the prescribed level of detail. The proposed rule will result in overreporting of immaterial information that will ultimately result in confusion among users of the financial statements.

The Proposed Rule Vastly Underestimates Cost

The costs to comply with the proposed rule are estimated to be approximately $500,000 in the first year and approximately $400,000 in subsequent years for Small Reporting Company, or SRC, registrants. We believe these estimates are far too low and likely assume SRC companies already have the necessary reporting infrastructure in place to support compliance with the proposal, which we believe to be untrue. Accordingly, the cost of compliance will have a much larger and disproportionate impact on NACCO and other SRCs as implementation of the proposed rule will require (i) creation and development of expansive new systems to collect, analyze and report data (ii) hiring of new staff with the appropriate scientific, accounting, and technical backgrounds, and (iii) utilization of outside consultants. NACCO anticipates its independent auditor and outside counsel costs will increase significantly to comply with the proposed rule. The proposed rule expressly acknowledges the incomplete nature of its costing exercise: "we are unable to fully and accurately quantify these costs" around measuring greenhouse gas emissions.

While the true cost of adopting the proposed rule is difficult to quantify given the absence of precedent for highly specific, mandatory disclosures, we believe the cost would exceed the amounts estimated in the proposed rule, and we urge the SEC to undertake a new realistic analysis of the true costs before implementing any final rules. The analysis should include the cost related to calculating Scope 1, Scope 2 and Scope 3 greenhouse gas disclosures.

In addition to the incremental cost of compliance, we believe the proposed rule would result in increased litigation as the plaintiffs' bar comes to realize the challenges companies face in terms of capturing and analyzing data. The potential for increased litigation under the proposed rule

[10] Id. at 21,335

would be expected to result in an increase in directors' and officers' insurance premiums and significant and unwarranted litigation costs.

The Proposed Rule Imposes Unrealistic Timelines

Under the proposed rule, Scope 1, Scope 2, and Scope 3 GHG emissions disclosures would be included in a special "Climate-Related Disclosure" section in an issuer's annual Form 10-K. Generally, issuers' Form 10-K reports are due 90 days after the end of the previous fiscal year for non-accelerated filers. As such, for calendar year companies, data included in these filings must be finalized in January or February to allow for assurance and other review processes associated with SEC filings.

GHG emission data takes time to calculate and will not be ready for publication 90 days or less after fiscal year-end. Not only would a company have to compile its own data, but it would also need emission rates from other entities in order to calculate Scope 2 or Scope 3 emissions. A service company, such as NACCO, is located upstream and downstream of many other companies. NACCO would also have to calculate and certify Scope 1 emissions soon enough to timely provide the information to companies calculating their Scope 3 emissions yet the deadline under the proposed rule is still the Form 10-K deadline.

If the SEC elects to move forward with requiring Scope 1, Scope 2, and Scope 3 emissions reporting, NACCO requests the SEC remove its proposed GHG emissions disclosures from Form 10-K and to instead allow GHG emissions reporting later in the fiscal year in a standalone report. Conversely, if the SEC is determined to include GHG emissions data in Form 10-K, the final rule could allow for a one-year lag time for GHG emissions disclosures which would grant companies additional time to collect, analyze, and audit their emissions data.

Even though NACCO is currently an SRC, it would be compelled under market pressure to provide emission data for large and accelerated filers for FY 2023. In the event the SEC moves forward with the proposed rule, NACCO requests that the SEC push back the initial reporting compliance dates for all filers by several years. Finally, should the SEC choose to finalize the requirement to report Scope 1, Scope 2, and Scope 3 emissions, the information should be furnished, not filed.

The Proposed Rule Should Exclude Scope 3 Reporting Requirements

The proposed rule would require all issuers other than SRCs to track and disclose their Scope 3 GHG emissions if they are material or if the company has set an emissions reduction goal that includes Scope 3 emissions. There is significant uncertainty with respect to the data and methodologies necessary for accurate and reliable Scope 3 reporting. Companies often do not have control over, nor access to, data from upstream and downstream emissions sources in their value chain. They also rely on a range of emissions factors, assumptions, and methodologies to estimate data not readily accessible to them. Given this constantly evolving reporting ecosystem, it would be impractical for the SEC to mandate disclosures of Scope 3 emissions in issuers' annual reports—especially without any flexibility for companies to customize their Scope 3 reports to include only available, reliable, and/or material information.

The proposed rule discusses a number of items a registrant might consider when determining whether Scope 3 emissions are material, including: (1) whether those emissions make up a relatively significant portion of the overall emissions; (2) whether those emissions represent a significant risk factor; or (3) consideration of future impacts, including the probability of an event occurring and its magnitude should it occur.

NACCO is concerned that the SEC has preordained sectors where Scope 3 emissions are material.[11] It seems the SEC would determine that Scope 3 emissions would be material for all companies that have fossil fuel ties since the rule indicates that Scope 3 emission from oil and gas manufacturers are likely material due to the emission intensity associated with downstream use of the products.[12] This is a simplistic view. For example, intensity may have no bearing on materiality if the aggregate level of emissions is low.

This materiality assumption is problematic as it is a significant divergence from the traditional materiality standard. The traditional materiality standard would focus on Scope 3's significance *to the reporting company itself*. For "materiality" to have any meaning in the Scope 3 context, public companies must be allowed to conduct a robust materiality assessment as to Scope 3's impact on the financial condition of their business and their exposure to Scope 3-related transition risks—not just evaluate the relative size of Scope 3 as compared to Scope 1 and Scope 2 emissions. While the proposed rule does provide a safe harbor for Scope 3 emissions disclosures, a better approach would be to remove any requirement for Scope 3 emissions reporting given the significant difficulties in reporting information that is accurate or reliable.

The Proposed Rule Would Improperly Impact Corporate Governance

We believe that requiring disclosure of whether any board member has expertise in climate-related risks would wrongly suggest that such an expert on the board member is necessary for a registrant to have effective climate-risk management. We believe the qualifications of a board of directors should be left to the company and its stockholders. Requiring disclosure of climate-related expertise would also raise the unaddressed issue of how to define "climate-related expertise". If the Commission concludes however that some description of board capabilities relating to climate risks should be required, we believe it would be preferable for the requirement be simply whether any member of the board of directors, in the judgment of the board, has relevant qualifications or experience in regard to climate-related risks, and a description of any such qualifications and experience.

Conclusion

NACCO appreciates the opportunity to provide these comments. We believe that compliance by reporting companies with the SEC's 2010 Climate Change Guidance as supplemented by the Sample Comment Letter issued by the SEC Staff in October 2021 provides reasonable investors with the information that they need to make informed decisions. NACCO believes that the SEC should abandon the Proposed Climate Disclosure Rule. The cost of compliance with the proposed rule will exceed any perceived benefit and the prescriptive requirements under the proposal will

[11] Id at 21,378.
[12] Id.

result in anything climate-related being considered presumptively material. The volume of required disclosures and the questionability of their materiality will confuse investors and could be a deterrent to companies remaining or going public.

Very truly yours,

NACCO INDUSTRIES, INC.

John D. Neumann