Continental
RESOURCES

June 17, 2022

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

RE: File No. S7-10-22; Release Nos. 33-11042 & 34-94478: *The Enhancement and Standardization of Climate-Related Disclosures for Investors*

Dear Chairman Gensler:

Continental Resources, Inc. (Continental) appreciates the opportunity to provide comment to the Securities and Exchange Commission (SEC) on File No. S7-10-22, the Commission's proposed rule to enhance and standardize climate-related disclosures by public companies. Continental is a top 10 independent oil producer in the U.S. and a leader in America's energy renaissance. Based in Oklahoma City, Oklahoma, Continental is the largest leaseholder and the largest producer in the nation's premier oil field, the Bakken play of North Dakota and Montana. Continental also has significant positions in the SCOOP and STACK plays of the Anadarko Basin of Oklahoma and newly acquired positions in the Powder River Basin of Wyoming and Permian Basin of Texas. With a focus on the exploration and production of oil, Continental has unlocked the technology and resources vital to American energy independence and our nation's leadership in the world oil market. In 2022, Continental will celebrate 55 years of operations.

Continental believes it is the responsibility of any energy provider, regardless of the energy sources, to protect the environment by limiting the waste associated with its operations. Our emissions strategy relies on modern facility design, a keen focus on infrastructure development and implementation of best practices. This focus has driven significant improvements in the GHG and methane intensities of our operations. Our commitment to reducing carbon is further exemplified by our strategic investment in Summit Carbon Solutions to capture and sequester 8-12 million metric tons of CO2 per year. This project, once operational, will be the largest carbon capture and sequestration projects of its kind in the world.

Continental has a vested interest in the SEC's efforts to require additional disclosure on certain emissions and potential risks and welcomes the opportunity to comment on this proposal. Continental does not support the SEC proposal as written.

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Continental is a member of various industry groups and trade associations which have filed or will file public comment on the SEC's proposed rule to enhance and standardize climate-related disclosures by public companies. Specifically, Continental endorses the positions put forth by The Petroleum Alliance of Oklahoma, The North Dakota Petroleum Council, The Western Energy Alliance, and The National Association of Manufacturers (collectively the Trades).

Continental believes that this proposal *will not* achieve the SEC's goals, but that it will introduce more uncertainty for the investor and therefore create more investor risk. Climate risk protocols and disclosure standards are still very dynamic, and many changes are anticipated to occur in the years to come. Regulations cannot provide nimble responses to the dynamic changes ahead and improper overregulation will adversely impact progress, and impair the responsive development of carbon capture avoidance, and sequestration markets.

The complexity of the proposal itself leads to a lack of clarity around the rule. The proposal runs 506 pages, contains 1068 footnotes, references 194 dense academic and governmental reports, and seeks to answer no less than 196 discrete questions. By SEC estimates, the required paperwork burden alone upon reporting companies under the proposed amendments is $10.24 billion. The economic benefit to society is not estimated by the SEC, but the proposal sets out that the primary benefit of the proposal is that investors would have access to more comparable consistent and reliable disclosures with respect to registrant's climate-related risk. Continental does not believe these benefits will materialize, making the cost of compliance even more unreasonable.

Continental believes that the abbreviated time to respond and provide public comment on this proposal was extraordinarily short. The large amount of data required to be gathered and reviewed to provide meaningful and informed comment on not only the proposal but around the questions put forth by the SEC demands a much longer public comment period than was allowed. Rather than illustrating the multitude of problems with this proposal one by one, Continental will focus on the key issues set out below.

I. <u>The SEC has gone beyond the authority granted to it by Congress.</u>

The authority granted by Congress to the SEC is limited to protecting investors, facilitating capital formation, and fostering fair, orderly, efficient public securities markets. Congress has not given the SEC unlimited authority over the economy or climate change policy. The use of the Task Force on Climate-Related Financial Disclosures (TCFD) Framework and the Greenhouse Gas Protocol (GHG Protocol) as the basis of the disclosure framework for the proposal makes it clear that the SEC is attempting to achieve outcomes which are not within the agency's authority. Congress has intentionally enumerated categories of information which require disclosure to the SEC, and Congress has yet to issue a specific mandate allowing the SEC to order climate-change disclosures.

Under a clear mandate from Congress, the Environmental Protection Agency (EPA) has been authorized to gather information about emissions sources and make them available to the public. The EPA has actual Congressional authority to regulate air quality, and public disclosure of greenhouse gas emissions (GHG) is already required by the EPA. The SEC proposal goes further than the requirements of the Clean Air Act (CAA) regulation in an area where the SEC lacks the technical expertise of the EPA. Oil and natural gas companies that emit GHGs above the 25,000 metric ton threshold set by EPA must already report their emissions under the GHG Reporting Program (GHGRP) §229.1504 administered by the EPA. Generally, the public companies subject to the SEC's proposed rule are of the size that also report under the GHGRP. Rather than ignoring EPA's regulatory authority and creating a more burdensome parallel disclosure program, the SEC should simply require companies to report the same emissions numbers reported to the EPA. Continental believes that the SEC should not be requiring collection and reporting of Scope 1 emissions outside EPA's GHGRP program.

The SEC has the authority from Congress to require reporting of purely factual, non-ideological information material to investor decision-making, but the ultimate appropriate and complete response to mitigating climate change is today unknown and unknowable and thus inherently political. Disclosure requirements that exceed the measurable disclosures necessary to ensure investor awareness of financial risks or avoid confusion also infringe upon issuers' First Amendment rights. Detailed disclosure requirements related to an issuer's beliefs about climate risks, the likelihood it assigns to those risks, and metrics related to these beliefs appear to constitute government-compelled speech and are outside the authority of the SEC. Investors already have access to significant amounts of material, relevant, and useful climate-related information via companies' existing reporting practices. Seeking to enhance climate-related disclosures, the SEC has proposed a rule that over emphasizes the impact of climate change on public companies. The proposal requires disclosure far beyond that required of other equal or more significant risks that companies face, such as risks to national security or the global impact of energy on impoverished societies. This over emphasis as a result, causes investor confusion as to the relative risk of climate-related factors and the relative importance of climate-related information. Further, the proposed rule will discourage companies from taking aggressive climate action by exposing them to increased regulatory, legal, and reputational risks if they set aspirational emissions reduction targets or implement an ambitious transition plan which they then are unable to achieve.

II. <u>The SEC should abide the long-standing, judicially accepted understanding of "materiality."</u>

The long-standing understanding of "materiality" limits registrants' reporting obligations to information material to a reasonable investor's investment decision, taking into account the "total mix" of information available to investors. In general, it has been understood that information is material if there is a substantial likelihood that a reasonable investor would consider it important or significant in deciding whether to buy or sell a security or how to vote as a shareholder. Disclosing companies do not have an obligation to disclose information solely because the information is material. The proposal mandates a set of climate related disclosures that will be mandatory for all reporters with no regard to materiality. The proposal requires disclosure of all Scope 1 and 2 GHG emissions without considering the financial metrics as a materiality qualifier. As to Scope 3 emissions, the proposal attempts to invoke the principle of materiality but falls short. Materiality for scope 3 emissions is essentially presumed by the proposal. Reporting companies are required to report Scope 3 emissions only if the company has set an emissions reduction target that includes Scope 3 emissions or if Scope 3 emissions are material. The materiality qualifier in relation to Scope 3 emissions is lacking because throughout the proposal and notice it is implied that Scope 3 emissions are in fact generally considered to be material and that any doubt about materiality should be resolved in favor of those the proposal is designed to protect.

III. <u>The SEC's proposed Scope 3 emissions disclosure safe harbor and other accommodations are illustrative of the fatal problems with Scope 3 emission disclosures.</u>

Continental has serious concerns with the proposal's Scope 3 disclosure requirement. Proposed Scope 3 reporting as written would impose significant costs and burdens on public companies. As mentioned above, the proposal requires companies to report Scope 3 emissions considered "material" or if the company has set a GHG emission reduction goal that includes Scope 3 emissions. Much of the Scope 3 emissions data up and down the value chain is not under Continental's control, and for that reason, Continental believes the accuracy of reporting Scope 3 emissions will be unreliable and inaccurate. Continental does not believe that public companies should be pressured into disclosing information that is not material to their operations, and Continental does not believe that the SEC has the statutory authority to require immaterial disclosures. The unintended (or maybe intended) consequence of this would result in continuous accusations of falsifying documents submitted because the data reported is unknowable and inestimable. The best example of this is the summation of worldwide estimates of Scope 3 definitionally. When added to Scope 1 and 2, it will likely exceed the entire emissions of the world and thus be false data.

Continental is also concerned with the unintended consequences that could arise from the Scope 3 emissions disclosure requirement. Continental's Scope 3 information is not standardized and permeates among potentially hundreds or even thousands of companies and millions of consumers that are impossible to accurately measure, calculate, or otherwise estimate. The SEC would be requiring Continental to somehow determine emissions data that are not available from their suppliers, who may or may not have to report to the SEC. If large SEC filers start to require such data from all their suppliers, they would be acting as agents of the SEC to compel companies not subject to SEC jurisdiction to in effect report to the SEC. The rule unintentionally incentivizes Continental and other public companies to favor large suppliers who have the wherewithal to calculate and provide their emissions data while disfavoring small suppliers that cannot. This is effectively an anti-competition small business killer.

On page 218 of the proposal, the SEC recognizes "that the calculation and disclosure of Scope 3 emissions may pose difficulties compared to Scope 1 and 2 emissions, which has caused concern for some commenters. It may be difficult to obtain activity data from suppliers and other third parties in a registrant's value chain, or to verify the accuracy of that information. It may also be necessary to rely heavily on estimates and assumptions to generate Scope 3 emissions data." Further, the SEC understates that "depending on the size and complexity of a company and its value chain, the task of calculating Scope 3 emissions could be challenging." To "balance concerns about reporting Scope 3 emissions," SEC proposes a short list of accommodations for Scope 3 emissions disclosures. Namely the proposal creates a "safe harbor" for Scope 3 emissions disclosures under the Federal Security laws, creates an exemption for smaller reporting Companies (SRCs) and establishes a delayed compliance date for Scope 3 emissions. Each of the accommodations are suspect in their effectiveness and in their ability to promote the rules' purpose of consistent and reliable reporting. The fact that the proposal must from its very enactment set forth accommodations to encourage Scope 3 disclosures by registrants is evidence that this disclosure is not capable of accomplishing the proposal's stated purpose to provide "consistent, comparable and reliable disclosures on the material climate-related risks public companies face."

IV. **The SEC significantly underestimates the costs of the proposal.**

As mentioned above the required paperwork burden alone upon reporting companies under the proposed amendments is estimated by the SEC to be $10.24 billion with the claimed benefit to society being that investors have access to more data with respect to registrants' climate-related risks. The proposed rule is narrow in its approach, requires detailed disclosures at a level which has never been required before, and it is out of step with current practices. It will substantially increase cost for public companies and those along their value change without equivalent benefit to investors. The proposal will be expensive, harm business and investors by increasing compliance costs, and generate an increase of disclosure statements overloaded with uncertain and immaterial information. As to Scope 1 and 2 emissions, accelerated filers as well as large, accelerated filers under the proposal are required to include an attestation report signed by an independent GHG attestation provider. This attestation is required to provide limited assurance for the second fiscal year and reasonable assurance starting the fourth year after the compliance date. This will no doubt be a huge financial windfall for audit firms. This is just one example of many of the increased cost registrants will be facing.

The SEC is required, when it is engaged in rulemaking under certain statutory provisions, to "consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation." 15 U.S.C. § 77b(b). On page 349 of the proposal the SEC unwittingly admits that the economic analysis section of the proposal is a fiction when it states, "in many cases, however, we are unable to reliably quantify these potential benefits and costs." The proposal goes on to list many indeterminate possible benefits and costs. Further, there is no estimate of what mandatory climate-related disclosures will cost in practice across the entire economy nor is there an estimate of the increased litigation costs public companies will inevitably face once the proposal goes into effect. This proposal on its face will not promote the required efficiency, competition, or capital formation. Additionally, and extremely important, is the fact that these proposals do not attempt to address the impact to national security which, is evidenced by recent events in Europe and is paramount in any GHG policy discussion or disclosure and they are integrally and inseparably linked.

V. Closing Comments

In closing, Continental endorses the *Joint Governors' Comment on SEC Release Nos. 33-11042 & 34-94478, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,334 (File No. S7-10-22)* letter to the SEC and specifically confirms the Joint Governors' statement that "The approach in the proposed rule is especially foolish at a time when the cost of energy, and everything that depends on energy, has skyrocketed. Americans are struggling to pay their bills during the worst inflation in decades, and they expect their federal leaders to do everything possible to bring down prices, not place additional burdens on businesses and increase the uncertainty they face." It is a hostile energy public policy, much like this proposal, which led to significant underinvestment in the energy sector and the high energy prices we are witnessing today.

Continental appreciates your thoughtful consideration of the comments, and it sincerely believes you must move forward in a measured and thoughtful manner within the bounds of the authority vested in the SEC by Congress. We urge that the proposed rule be withdrawn. In the alternative, Continental suggests that the recommendations of The Petroleum Alliance of Oklahoma, The North Dakota Petroleum Council, The Western Energy Alliance, and The National Association of Manufacturers be implemented. Continental further urges that Scope 3 emissions disclosure be removed from the proposal until a date in the future when such disclosures can be accurately reported throughout the value chain.

The proper course of action to address climate change is not a question to be settled by the SEC. It is a question that should be addressed by Congress.

Sincerely,

William J. Houser

William J. Houser
Director, Regulatory Affairs
Continental Resources, Inc