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100 F St. NE, Washington, DC 20549

RE: U.S. Securities and Exchange Commission Proposed Rule on "The Enhancement and Standardization of Climate-Related Disclosures for Investors"

Chair Gensler:

ConservAmerica appreciates the opportunity to comment on the U.S. Securities and Exchange Commission's (SEC) proposed rule on "The Enhancement and Standardization of Climate-Related Disclosures for Investors" (proposed rule). ConservAmerica is a nonprofit organization dedicated to promoting commonsense, market based and fiscally responsible solutions to today's environmental, conservation, and energy challenges. Addressing climate change ranks among ConservAmerica's highest priorities. Toward this end, we're actively involved in the development and promotion of policies and practices that support technology innovation and natural solutions that reduce emissions, enhance competitiveness, and promote resilience.

An independent regulatory agency, the SEC is tasked with three important objectives critical to maintaining trust in the US financial market: protecting investors; maintaining fair, orderly, and efficient markets; and facilitating capital formation. In the proposed rule, the Commission is seeking to expand its existing climate related disclosure requirements to focus on certain corporate governance functions, including the identification, analysis, and management of climate-related risks, their impact on the business, and on the company's consolidated financial statements. In addition, companies would be required to disclose any climate related targets or goals, how those are to be met, and progress toward meeting those goals. Companies would also be required to identify and disclose both its direct greenhouse gas (GHG) emissions (Scope 1) and those related to its energy consumption (Scope 2), and in certain cases, the emissions along its entire value chain (Scope 3). In addition, many companies would be required to have their disclosed emissions data attested to by an independent third-party.

As a general matter, ConservAmerica supports transparency in environmental reporting and efforts to standardize disclosure requirements so that investors have easy access to relevant information. With that said, the proposed rule would unnecessarily add significant, new costly and burdensome requirements on publicly traded companies, and create a chilling effect on investments in the U.S. energy that will impair global competitiveness and could actually – and perversely - increase emissions.

1. The Proposed Rule Exceeds the SEC's Mandate and is Unnecessarily Costly

The SEC's rules, as clarified in its 2010 interpretative guidance, already require publicly traded companies to disclose a wide range of climate information to the extent that it is financially material, including: the effect of existing or probable government regulations on a business, including facility improvements to reduce emissions; any administrative or judicial proceedings under laws or regulations primarily for the purpose of protecting the environment; trends or uncertainties that are expected to have a material impact on the company, which would require consideration of risks and opportunities related to climate; and, material factors that make an investment in a company speculative or risky, including the physical impact of climate change.[1]

These rules are principled-based and grounded in the materiality standard, which has long underpinned U.S. capital markets and ensured that federal securities regulation fulfills the Commission's tripartite mission. That standard, which is generally defined by Congress and the courts as requiring disclosure of information necessary to protect investors from inflated prices and fraud, has long instilled confidence, promoted market efficiency, and competition and is thus tied to advancing the goals of federal securities laws, as reflected in the SEC's mission. Furthermore, much of the emissions data the Commission is seeking is already publicly available under the EPA's Greenhouse Gas (GHG) Reporting Program, which captures 85-90% of U.S. GHG emissions from the largest emitters[2]. Combined with the U.S. Inventory of GHG emissions, investors have more than enough data about a companies' emissions profile to make informed investment decisions.

Unfortunately, the SEC's proposal goes well beyond requiring information that provides an objective picture of a company's financial situation. Instead, it seeks to impose an unnecessarily burdensome and costly reporting structure that requires disclosure of a wide range of information, much of which is non-investor-oriented, and that is largely immaterial to a company's financial health. If there is concern regarding companies' disclosures, they might be more readily and cost effectively addressed through updated guidance regarding its materiality standards and by cross referencing EPA's GHG Reporting Program. As it stands now, the SEC projects that companies will spend a minimum of $500,000 complying with the rule in the first year alone.[3] For many companies, those costs are significant and could contribute to a company's decision to forego participating in public markets. On an annual basis, companies are projected to spend more than $10 billion cumulatively and burn more than 43 million workhours to meet the demands of its proposal. These direct compliance costs are likely underestimated, however, and they say nothing of the broader costs to the economy, due to the proposal's impact on capital allocation, markets, and energy prices, as discussed below. [4]

Notwithstanding the SEC's stated goal of establishing a reporting framework that provides more "consistent, comparable, and reliable information," the Commission should not attempt to expand its authority simply because a subset of investors is interested in compelling corporate adherence to aspirational policy objectives, regardless of their merit. In fact, given the well documented political opposition the proposal has already garnered, it is likely that the rule will result in market instability and confusion, as the rules become a continued source of controversy and subject to repeal once a new Administration takes office or the complexion of the Commission itself changes.

II. Current Energy Supply Shortages

As the Commission is undoubtedly aware, our economy is currently faced with historic energy supply challenges. After a decade of underinvestment in the oil and gas sector, current domestic output sits well below pre-pandemic levels while demand returns to normal. US consumers face the reality of a 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. Unfortunately, much of this shortage is driven by domestic energy policy which has seen freezes in new leasing projects and

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[1] 2 SEC, "Commission Guidance Regarding Disclosure Related to Climate Change," 75 Federal Register 6290 (February 8, 2010), at https://www.federalregister.gov/documents/2010/02/08/2010-2602/commission-guidanceregarding-disclosure-related-to-climate-change.

[2] See CRS report "EPA's Greenhous Gas Reporting Program" (Nov. 16, 2021); available at https://sgp.fas.org/crs/misc/IF11754.pdf

[3] 87 Fed. Reg. at 21,439

[4] https://www.politico.com/newsletters/the-long-game/2022/04/21/the-cost-of-climate-regulation-00026694

pipelines, discouraging the investment necessary to explore, develop, and produce the energy America needs to prosper and be secure.

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.[5] 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.[6]

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.[7] 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.[8]

Policy choices that constrain supply directly affect American consumers, with high prices now stretching across all critical energy categories. Total current 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 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.[9]

As the Commission seeks to impose its 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.

III. The Proposed Rule Will Further Restrict Capital to the Energy Sector

It's abundantly clear 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 corporate financial statements, 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 their 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 proposed rule "can more broadly inform the wider spectrum of climate policymaking – policymaking that deserves incisive, informed, and - importantly - swift attention."[10]

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

[5] 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

[6] 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

[7] 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/

[8] 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

[9] 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

[10] See Commissioner Lee remarks to the PRI (October 20, 2021) https://www.sec.gov/news/speech/lee-remarks-prilseg-investor-action-climate-webinar-102021

Disclosures (TCFD), which is the core framework the Commission has modeled its proposal on, states that its purpose is to "empower[] the markets to channel investment to sustainable and resilient solutions, opportunities, and business models."[11]

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. 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.

Mandatory disclosure will also 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 fail to address conditions of "declining demand."[12] That position seems radically out of sync with current market conditions.

The requirements of the proposed rule – with certifications and outside auditors - could discourage companies from setting aggressive targets. The resulting costs of the rule will create undue burden on climate conscious companies and divert resources away from genuine and long-lasting efforts to reduce emissions. We expect to see scores of shareholders and environmental activists use the rule to starve energy firms of resources, including by launching costly lawsuits when climate-risk estimates made in good faith happen to turn out 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 borrowing costs 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.

IV. The Proposed Rule 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 sector to meet present energy demand. The energy crisis facing the country today will be further exacerbated as costs pile onto energy producers and 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 already projects to occur by next

[11] See Task Force on Climate-Related Financial Disclosures, https://www.fsb-tcfd.org/about/ (last visited April 26, 2022).
[12] See comment from Wellington Asset Management (June 11, 2021) https://www.sec.gov/comments/climate-disclosure/cll12-8944103-245735.pdf

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.[13]

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, 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.[14]

Supporting this analysis, a recent Department of Energy estimate found that natural gas pipelined from Russia to Europe has 41 percent higher life cycle emissions than American LNG shipped to Europe, owing to cleaner processes used by producers in the United States. This means 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.[15]

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.[16] Supporting US energy on the global stage, rather than inhibiting it, will avoid these unintended effects globally.

V. Conclusion

The proposed rule's prescriptive regime for emissions disclosures for public companies is unnecessary, will weaken our country's energy security, and undermine our climate goals. 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.

We hope that you will find our comments useful and constructive.

Sincerely,

Todd Johnston
Vice President

[13] 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

[14] https://www.reuters.com/business/energy/us-eu-strike-lng-deal-europe-seeks-cut-russian-gas-2022-03-25/

[15] https://www.energy.gov/sites/prod/files/2019/09/f66/2019%20NETL%20LCA-GHG%20Report.pdf

[16] https://thedocs.worldbank.org/en/doc/1692f2ba2bd6408db82db9eb3894a789-0400072022/original/2022-Global-Gas-Flaring-Tracker-Report.pdf