American Exploration and Production Council (AXPC) Comment Letter on SEC Proposed Rule

Submitted via https://www.sec.gov/cgi-bin/ruling-comments

June 17, 2022

The Honorable Gary Gensler
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comments of the American Exploration and Production Council on the Proposed Rule "The Enhancement and Standardization of Climate-Related Disclosures for Investors," SEC File No. S7-10-22.

Dear Chairman Gensler:

The American Exploration and Production Council (AXPC) appreciates the opportunity to provide comments on the Securities and Exchange Commission ("SEC" or the "Commission") proposed rule for climate-related disclosures for investors ("Proposed Rule") in Release No. 33-11042 (the "Proposing Release").[1] AXPC recognizes the importance of the SEC's tripartite mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. However, AXPC is concerned that the Proposed Rule does not strike the right balance. As written, some requirements are unworkable, and may even prove counterproductive in key respects, given the SEC's stated goal and longstanding tripartite mission. Mindful of the SEC's directive under the federal securities laws, AXPC submits this comment letter to help the SEC improve the Proposed Rule to serve the best interests of investors and the US capital markets. Our response is intended to provide constructive feedback to the rule as proposed. The quickly evolving nature of climate disclosure calls into question whether an SEC rulemaking of this scope and scale at this time is prudent and can be done in a way that does not impede the progress the business community has made and continues to make in providing climate-related information to investors, while developing strategies and technologies to reduce climate risk and its adverse impacts on society.

AXPC is a national trade association representing 28 independent oil and natural gas exploration and production companies including many of the largest in the United States. AXPC companies include worldwide leaders in clean and safe onshore production of oil and gas, and support millions of Americans in dependable jobs while also supporting and reinvesting into our communities. Collectively, AXPC's 28

---

[1] Release No. 33-11042, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, 87 Fed. Reg. 21,334 (Apr. 11, 2022).

members alone produce over half (~55%) of the country's onshore oil and natural gas production. Dedicated to safety, science, and technological advancement, our members strive to deliver reliable energy to consumers while positively impacting the economy and the communities in which we live and operate. As part of this mission, AXPC members understand the importance of supporting environmental and public-welfare goals and responsible stewardship of the nation's natural resources. The United States is a world leader in oil and natural gas production; since achieving this position, we've simultaneously reduced overall emissions. AXPC members continue to support and progress on both these priorities through technological innovations and promoting collaboration in the development of climate-risk mitigation strategies.

Robust environmental, social, and governance ("ESG") reporting is important to our companies and stakeholders (e.g., investors, lenders, impacted communities, employees, agencies, and NGOs), and AXPC's members are committed to engagement and progress on these issues. As a reflection of this commitment, AXPC has an established ESG committee to support member commitments to sustainability and other relevant issues. The group meets regularly to share best practices, follow ESG trends and initiatives, and help each other continuously improve their efforts around related programs and disclosures. We have even taken action to enhance consistency and comparability in the voluntary reporting of key metrics in the upstream sector through the launch of our AXPC ESG Metrics Framework and Template in February 2021.

AXPC believes that policy solutions addressing climate change should reduce emissions as low as possible at the pace of innovation. Market-based solutions that are practical, flexible, predictable, and durable are the core of effective climate policy. We believe the SEC needs to align with the goal of ensuring that investors have material and comparable information to assess companies' financial and operational performance, while at the same time acknowledging the costs and potential unintended consequences of action and inaction. Any federal policy should consider the competitiveness of US businesses, both public and private, as well as national security interests.

We understand that where climate change impacts are material to a corporation, the SEC has a role to play guiding climate disclosures that a reasonable investor can use for comparative investment decisions. However, notably, the broad scope and inherent complexity of the SEC's proposed rule, as well as requirements for collecting and reporting data in both an unreasonable timeframe for compliance and mismatch with the baseline regulatory reporting, makes it practically unworkable, and in many instances, counterproductive to its goal. As a result, the SEC's Proposed Rule does not provide companies with a roadmap to help provide comparable or material data to investors; rather, the required calculations and analysis necessary to make the proposed disclosures would create greater uncertainties. Finally, we are not aware of the SEC ever having mandated disclosures in spite of so many significant uncertainties, data limitations, and practical difficulties in developing the required information.

AXPC recommends instead that the SEC pursue a more tailored and limited approach, coupled with a manageable implementation timeframe and reporting period alignment that alleviate some of the concerns regarding the current Proposed Rule. The consistent themes of this comment letter are that the

Proposed Rule is too much, relies on too many uncertainties, and provides timeframes for compliance which are unreasonable, and in many cases would result in less comparable, less useful information for investors. If the SEC revises the Proposed Rule to reflect the alternatives and ideas presented herein, we believe the final rule would more effectively advance the SEC's mission and provide investors with reliable, material information. In short, a more streamlined approach that is principles-based and qualified by traditional principles of materiality, would produce a better outcome for the registrants preparing the disclosures and for reasonable investors evaluating them.

AXPC believes it is important for the SEC to build on the concepts and recommendations presented herein and respectfully urges the SEC to address the issues identified below before adopting any final rules.

SUMMARY COMMENTS AND RECOMMENDATIONS

The Proposed Rule presents several difficulties which we summarize here along with recommendations.

- **The SEC should not create new financial accounting disclosures for climate-related metrics. (Regulation S-X).**

  Article XIV of Regulation S-X is vast and unprecedented in scope, granularity, complexity, and prescriptiveness. It will require untold estimates, assumptions, and judgments against the backdrop of significant data limitations and speculative impacts. The proposed requirements related to Regulation S-X represent disruptive rulemaking from the standpoint of financial reporting and disclosure controls, processes, and procedures, but are not based on a legislative mandate. Moreover, Proposed Article XIV does not represent an incremental build onto existing registrant experience and given the Proposed Rule's details and specificity, AXPC is concerned it goes far beyond what is warranted to respond to calls for climate-related disclosures. Because of the inherent difficulties and uncertainties associated with estimating the proposed financial metrics, AXPC strongly requests that the Proposed Rule remove any new Regulation S-X requirements. If the SEC persists on inclusion of these financial metrics, AXPC strongly recommends that it be required on a prospective basis at the point of implementation and reporting periods prior to the effective date not be required to be presented in the initial SEC filings reflecting the new disclosures established in a Final Rule.

- **The Proposed Rule would substantially revise or ignore the concept of materiality.**

  The Proposed Rule substantially deviates from the longstanding conception of materiality under the federal securities laws which is supported by related case law. For decades, the existing concept of materiality has advanced the best interests of investors, encouraged capital formation, and helped ensure the integrity of our capital markets. In contrast, the Proposed Rule calls for the disclosure of granular climate-related information that is often immaterial under the standard of materiality that the United States Supreme Court handed down decades ago. AXPC recommends that SEC return to the traditional principles of materiality in its final rule.

- **The SEC should not require reporting of Scope 3 emissions.**

  The SEC should recognize the inherent difficulties and inconsistencies with comparably reporting Scope 3 emissions and forego any required Scope 3 reporting. Not all Scope 3 reporting is equal or comparable and although various methodologies and categories for Scope 3 reporting exist, the lack of uniformity and amorphous nature of current guidelines often makes disclosures between companies noncomparable. Due to data gaps, boundary definitions, and ambiguous categories, Scope 3 emissions disclosures lack consistency and utility. This data needs to be treated with caution regarding the reliability of such disclosed estimates. Mandated reporting of Scope 3 information is likely to be unhelpful at best and potentially misleading to the reasonable investor. Thus, we believe requiring disclosure of Scope 3 by regulation poses an unacceptable risk of confusion and incorrectly implies a level of accuracy among both reporting entities and the investing public, including the risk of double counting of emissions.

- **The SEC should allow registrants to report Scope 1 emissions (and potentially Scope 2 emissions) through better established metrics that do not conflict with existing greenhouse gas ("GHG") reporting obligations.**

  Emissions data is already submitted by many companies to the US Environmental Protection Agency (US EPA) via the Greenhouse Gas Reporting Program (GHGRP). The US EPA is the recognized federal agency expert regarding emissions reporting and regulation and their GHGRP is the most consistent, comparable emission dataset available today. Despite the SEC's stated intentions, as currently proposed, the GHG emissions reporting requirements to be adopted by the SEC would conflict with the EPA GHG reporting requirements, such that each company would be required to maintain two (or more if other regimes apply) separate GHG reporting functions and ledgers. The SEC should not direct registrants to use a separate reporting methodology that may result in conflicting emissions reporting and create the need to develop separate emissions reporting standards and inventories. Creating a separate emissions reporting approach will only create avoidable conflicts resulting in confusion and less comparability of disclosures for investors.

- **Third-party attestation of GHG data is not appropriate at this time.**

  The proposed attestation requirements pose significant implementation challenges. Although AXPC understands the value of having data reviewed by qualified third parties, the timeline of the Proposed Rule is impractical for compliance by registrants. For example, the timeline fails to consider human capital constraints and the significant gap between the number of available GHG emission attestation providers and the expected demand. Moreover, the Proposed Rule gives registrants very little time to enhance their GHG data systems and processes in preparation for the attestation process. In sum, the time period provided by which registrants will be required to have third-party attestation completed is not realistic based on the number of qualified experts available. Instead of a mandatory attestation regime, assurance of climate information should be voluntary.

- **The implementation schedule in the Proposed Rule is unworkable.**

  The rapid implementation of such a groundbreaking rule will be unworkable and likely result in disjointed disclosures both within and across industries during the early implementation periods. AXPC urges the SEC to adopt a more gradual phase-in of the reporting requirements, or, alternatively, provide explicit liability protections related to the disclosures. Many of the reporting provisions, and in particular the financial metrics disclosures and the GHG emissions disclosures, will require a significant transition period for registrants to develop the complex new processes, procedures and controls that will be required to achieve compliance. Accordingly, AXPC strongly recommends that the SEC extend the compliance dates such that they become effective at a minimum two years beyond the dates set forth in the Proposed Rule. Additionally, to accommodate special challenges posed in mergers and acquisitions, we recommend that the SEC, on an ongoing basis, permit companies to delay reporting on acquired businesses for an additional year from the date of acquisition.

- **The SEC has not demonstrated that a Proposed Rule this sweeping is warranted.**

  The Proposing Release repeatedly cites a demand for climate disclosure from select investors. Although such interest warrants appropriate attention, it does not justify the whole of the Proposed Rule in the combined breadth and prescriptiveness of requirements. Moreover, the Proposing Release appears to largely dismiss the level of significant climate and environmental disclosures already made by public companies. If adopted, the Proposed Rule would impose weighty compliance obligations unprecedented in the SEC's history. In addition to this, the Proposed Rule would impose a vast and costly new reporting regime on registrants. This new reporting regime required by the SEC's approach is in stark contrast to other critical disclosure obligations that are principles-based and present information in a curated way, as viewed "through the eyes of management." The Proposed Rule would transform SEC reports from filings that center on the financial and operational performance of companies into filings that, in notable respects, blur the lines between environmental regulatory reporting and financial reporting potentially inundating investors. Further, the economic analysis in the Proposed Release is incomplete and substantially underestimates compliance costs. The SEC has: i) failed to adequately assess the existing economic baseline, ii) underestimated and ignored substantial costs of the Proposed Rule, and iii) disregarded marginal costs and benefits. There are other significant defects in the SEC's economic analysis described herein in our detailed comments.

- **The SEC should revise and expand the disclosure safe harbor.**

  The proposed safe harbor from liability applicable to the proposed disclosures is too narrowly crafted and does not provide adequate relief. There should exist a meaningful safe harbor for the entirety of any final rule considering the unique challenges that the SEC itself recognizes registrants must overcome to meet the proposed climate-related disclosure obligations. The SEC should enhance the safe harbor to recognize the evolving nature and inherent uncertainties of assessing climate risks to the level of granularity (e.g., risks to specific locations and assets) required in the Proposed Rule. Registrants should be shielded from liability for forward-looking statements and any inaccuracy in the reporting of the many metrics that necessarily involve uncertainty and subjective or speculative judgment calls. Lastly, if the SEC should require climate-related disclosures to be provided through a specialized, separately furnished climate disclosure report (e.g., Form SD), the enhanced safe harbor should be applicable to the entirety of said report.

- **AXPC recommends that the SEC revise the rule so that all climate-related disclosures are deemed furnished rather than filed.**

  We agree that increasing consistency in and access to information regarding climate-related risks are of growing importance to stakeholders. However, the Proposed Rule would expose registrants to a wide universe of liability without providing any increased benefit to investors. Whereas, allowing issuers to furnish, rather than file, climate information would allow for quantitative and qualitative discussion of relevant metrics without creating these new liability concerns. The rationale in the Proposed Rule for requiring climate disclosures to be filed rather than furnished ignores the array of existing deterrents against greenwashing and failure to follow through on climate commitments.

- **The Proposed Rule seeks to advance many policy goals outside the SEC's authority.**

  The Proposed Rule extends beyond the SEC's statutory authority and poses significant risks with respect to confusing, rather than educating, investors on a registrant's climate risk. It seeks to utilize SEC disclosures to dictate what is or is not material for companies and creating a heightened sense of risk due to the sheer volume of required disclosures. Additionally, the Proposed Rule raises a number of questions and creates requirements that appear to be inconsistent with the well-established United States Supreme Court precedent defining the concept of "materiality." As a result, the Proposed Rule poses significant risks with respect to confusing, rather than educating, investors on a registrant's climate risk.

- **The Proposed Rule would discourage companies from entering or remaining in the public markets and adversely affect capital formation.**

  The proposed climate reporting regime would vastly increase costs and the complexity of reporting. There is a real potential that managerial resources will be diverted from other elements of the business. There is a great likelihood that shareholder activism will increase. This could reasonably be expected to result in private companies avoiding public markets, limiting opportunities for retail investors to participate in the next generation of public company value creation. Many existing registrants are likely to reach the same conclusion and pursue efforts to exit the public markets. We request that the SEC properly quantify the costs and benefits associated with the proposed rule and assess how the proposed rule may affect the choice of being a public or private company.

- **Current climate-related disclosures reported voluntarily for stakeholders through company sustainability reports have not yet been determined to be material to investors for decision making.**

  AXPC members are committed to working with investors to provide meaningful and material climate-related risk disclosures and other filings as appropriate and consistent with the 2010 SEC climate disclosure guidance. In addition, many registrants already provide voluntary climate-related disclosures that are developed through meaningful engagement with stakeholders, including investors. These disclosures are frequently made in alignment with sustainability frameworks and programs, such as the Taskforce on Climate-related Financial Disclosures ("TCFD") as applicable to their respective industries. Companies have voluntarily set targets, shared GHG emission data, and provided specifics on how emissions will be reduced, while being transparent about the uncertainties in projections due to changes in technologies, policies, and markets at the request of certain stakeholders as well as many other facets of their business but have not included this information in their SEC filings as it has not yet been deemed material to shareholders for investment decision-making.

- **The SEC should reconsider its heavy reliance on unregulated standard setters.**

  The SEC places a heavy reliance on and deference to, third-party standard setters. At times, this approach is proving problematic. These organizations were created to address various policy issues and constituencies beyond those of the US capital markets and investors. The process for third parties developing these standards is not subject to the rigors of the Administrative Procedure Act. Many of the standards address topics and are intended to achieve objectives far removed from the SEC's core expertise and authority as a capital markets regulator. Nor does the SEC have the ability to inspect or examine the entities developing these standards, and thus the SEC is unable to provide oversight and ensure procedural fairness consistent with how it regulates other key market participants. Sourcing established frameworks as SEC develops its own rulemaking is preferred, but reliance on other evolving frameworks creates uncertainties. The Proposed Rule seeks to incorporate certain international frameworks such as the TCFD and the Greenhouse Gas Protocol ("GHG Protocol") jointly convened by the World Resource Institute ("WRI") and World Business Council for Sustainability Development ("WBCSD"). While many companies utilize the TCFD framework for voluntary reporting, the GHG Protocol has not been widely adopted. In part, this lack of wide adoption is because aspects of the protocol are expected to be updated, with many key areas, which the Proposed Rule seeks to incorporate, left unsettled, such as disclosure of Scope 3 emissions.

- **The Proposed Rule risks confusing investors.**

  There remains substantial doubt that the requirements in the Proposed Rule will lead to better understanding of this complicated topic. To the contrary, AXPC sees a risk that the new disclosures – many of which may not be material to a registrant's operating and financial performance – would inundate investors and create unnecessary confusion and misunderstanding. One of the stated goals of the Proposed Rule is to enhance comparability that has been lacking from voluntary disclosures made by registrants. Yet, the Proposed Rule's one size fits all approach provides little guidance that would accomplish this. For example, guidance is notably lacking on the reporting of company emissions and how registrants should interpret and define climate-related financial impacts. This disparity may instead confuse investors where similar emissions information may be readily available in voluntary reporting utilizing other existing sustainability frameworks, or where data is available through jurisdictional reporting that requires a different methodology, such as the EPA's emissions reporting. Moreover, given the data quality concerns any potential benefit to investors will be limited and overwhelmed by the sheer volume of climate information that the Proposed Rule requires to be included in registrant's annual filings. The stated benefit of reliability is also unlikely to result from implementation of the Proposed Rule.

AXPC appreciates the importance of protecting investors through disclosure of material risks, including those related to climate change. However, because of the inherent difficulties and uncertainties associated with estimating the proposed financial metrics and the proposed GHG emissions data, AXPC strongly requests that the Proposed Rule remove any new Regulation S-X requirements, incorporate rather than duplicate existing emission reports, and that the SEC allow for the furnishing (as opposed to filing) of any climate-related disclosure materials as we believe these targeted changes will ease compliance burden while still preserving the SEC's goal of enhancing and standardizing climate-related disclosures.

Below, we provide additional specific comments from AXPC in response to the Proposed Rule released on March 21, 2022 and published in the Federal Register on April 11, 2022.

SPECIFIC DISCUSSION AND RECOMMENDATIONS

I. <u>The inclusion of climate-related metrics in registrants' financial disclosures is premature and unworkable as proposed.</u>

AXPC has significant concerns with the required reporting of climate-related risk information in the S-X section of a registrant's filing. Climate-related risks are very difficult to align numerically to financial impacts. We oppose any requirements to file any such information in the financial sections of SEC filings for all registrants.

A. Remove requirements associated with financial disclosure of material climate-related metrics.

AXPC recommends the SEC remove any requirements to include climate-related metrics in financial statements, remove any requirements to include actual and potential impacts associated with climate-related risks on the registrant's strategy, business model, and outlook, and remove any requirements to disclose how climate-related risks have affected, or are reasonably likely to affect, its consolidated financial statements. The proposed amendments to Regulation S-X would require inclusion of a climate-related note to a registrant's audited financial statements disclosing the impact of severe weather events (and other natural conditions) and transition activities. Proposed Item 1502(b) requires a registrant to "describe the actual and potential impacts of any climate-related risks" upon its strategy, business model, and outlook. Additionally, pursuant to Proposed Item 1502(c), a registrant is also required to discuss whether and how such impacts are considered as part of its business strategy, financial planning, and capital allocation. A registrant must also provide a narrative discussion—under Proposed Item 1502(d)—regarding whether and how any climate related risks have affected, or are reasonably likely to affect, its consolidated financial statements.

These proposed requirements raise several significant concerns. First, many of the climate-related topics identified under the Proposed Rule are difficult to align to relevant financial impacts and therefore registrants will struggle to consistently and comparatively report this information on a line-item basis. For example, a registrant may modify design plans of a facility following a physical assessment for severe weather events and other natural conditions (e.g., flooding, high winds, fire, etc.) to address such events based on the probability of occurrence. Under the Proposed Rule, it appears the SEC expects a registrant to parse out discrete aspects of a design planned to manage specific climate-related risks, such as increased rainfall. Registrants do not currently track this information in separate line items for such expenses, nor does there exist a standard or acceptable definitions for how to parse out the climate-change components versus those components that are natural weather patterns for areas and ecosystems. Moreover, the Proposed Rule does not prescribe which natural conditions and severe weather events should be included in the disclosure of financial impacts.

The Proposed Rule calls for disclosure of the financial impacts of transition risks. The SEC would define this to generally include, among other matters: i) increased costs attributable to climate-related changes in law or policy, ii) reduced market demand for carbon-intensive products, iii) the devaluation or abandonment of assets, iv) risk of legal liability and litigation defense costs, v) competitive pressures associated with the adoption of new technologies, and vi) reputational impacts, including those stemming from a registrant's customers or business counterparties. Many of these risks are highly speculative and subject to significant uncertainty. Moreover, the past several years have shown that volatility resulting from the COVID-19 pandemic, geo-political events, inflation, and other factors can disrupt climate transition related projections. In the absence of actual costs, the required disclosures would largely be rooted in subjective estimates and assumptions resulting in disclosures that would likely be incomparable amongst companies. Thus, the high degree of ambiguity in determining the distinct impacts of these risks renders the required disclosure to not be meaningful. Moreover, in the event of such uncertainty, GAAP would likely guide a registrant towards not recording the estimated amount of the impact. The SEC (through the Proposed Rule) has not provided sufficient information for how it would address the intersection of this uncertainty and GAAP standards.

AXPC supports the US Chamber of Commerce's comments that the SEC should not create new financial accounting disclosures for climate-related metrics and related impacts. As stated in the Chamber of Commerce's comments:

> *Proposed Article 14 of Regulation S-X is largely unworkable, and such disclosures are not likely to be material or useful for investors. The proposed requirements represent transformative rulemaking from the standpoint of financial reporting and disclosure controls, processes and procedures, but are not based on a legislative mandate and cannot be complied with using incremental builds on existing controls, processes and procedures given the vast and unprecedented scope, granularity, complexity and prescriptiveness of the Proposed Rules. Furthermore, the Proposed Rules require untold estimates, assumptions and judgments against the backdrop of significant data limitations and speculative impacts. The rigid and detailed mandates of proposed Article 14 are in stark contrast to the flexible principles regarding disclosure of climate-related financial impacts contemplated by TCFD and extend far beyond what is warranted to respond to what investors have called for, particularly in light of the high costs of compliance – costs that will be even higher to the extent these disclosures are subject to the financial statements audit.*

B. Disclosure of material climate-related impacts is already required within existing S-K guidance.

We believe the current disclosure requirements as it relates to reporting of material climate-related events and impacts is sufficient as established in Regulation S-K Item 303 – Management's Discussion and Analysis of Results of Operations, and similarly, for climate-related risks to the business, as established in Regulation S-K Item 105 – Risk Factors. Accordingly, due to the difficulties described herein in quantifying and bifurcating the discrete impacts of climate-related events and trends, it's most appropriate to continue *furnishing* this information within SEC filings in Form 10-K and 10-Q under the referenced items within Regulation S-K.

C. The financial disclosure requirements should be established in consultation with the Financial Accounting Standards Board (FASB)

Any financial statement note requirements should be established in consultation with FASB because FASB has expertise in guiding financial reporting and accounting standards, defining evolving concepts, and weighing interpretations on financial reporting and accounting. FASB has also shown a consistent and methodical approach to financial reporting rulemakings, with past projects such as the Revenue Recognition Standard, Lease Accounting Standard, and Current Expected Credit Losses Standard having been thoughtfully constructed over several years through significant engagement with preparers and users of the financial statements. Should the Commission pursue providing disclosures of climate-related impacts in a note to the audited financial statements, it would be more appropriate to task the FASB with such an endeavor.

D. The "one-percentage" threshold is arbitrary and likely to result in disclosures that are vast and expansive, but most concerningly, not material.

The proposed amendments to Regulation S-X stipulate that the:

i) "[I]mpact of the climate-related events or transition activities on each line item of the registrant's consolidated financial statements," and

ii) "[A]ggregate amount of expenditure expensed or the aggregate amount of capitalized costs incurred" for climate-related events or transition activities shall be made

iii) Unless the: (a) "absolute values of all the impacts on the line item is less than one percent of the total line item" or (b) "less than one percent of the total expenditure expensed or total capitalized costs incurred," respectively.

The threshold of "less than one percent" is arbitrary and inconsistent with the current definition of materiality applied by most registrants in the consolidated financial statements. The examples of similarly low thresholds provided in the Proposed Rule are inapposite to the disclosure of financial impacts. Financial disclosures have long been grounded in traditional principles of materiality. The traditional materiality lens is the lens through which investors have become accustomed to examining financial data. Setting an arbitrary threshold of 1% risks distorting investor perceptions.

Most registrants provide disclosure in consolidated financial statements for all required items that are "material" to their consolidated financial statements. Regulation S-X Item 1-02(o) defines:

> [T]he term material, when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters about which an average prudent investor ought reasonably to be informed.

Registrants currently assess materiality for consolidated financial statements using both qualitative and quantitative factors in a manner that is consistent with existing guidance interpretations, such as Staff Accounting Bulletin No. 99 – *Materiality* (SAB 99). Requiring registrants to provide disclosure in the consolidated financial statements using an arbitrary bright-line threshold of one percent would result in the disclosure of items that are not material in the consolidated financial statements since such threshold is fundamentally inconsistent with current guidance on determining material disclosures. For these reasons, we request that the SEC remove the requirements in the notes to the financial statements to disclose climate-related information using this discrete, arbitrary bright-line threshold approach.

II. <u>The GHG emission disclosure requirements must be re-evaluated</u>

A. Base the emissions reporting on US EPA regulations.

Many companies already report GHG emissions to the EPA, state reporting agencies, and pursuant to international reporting frameworks and other reporting agencies. The SEC has proposed a framework that is inconsistent with the EPA reporting requirements such that companies would be required to maintain at least two separate GHG emissions reporting functions: one for the EPA and one for SEC. If the SEC requires disclosure of GHG emissions data, AXPC recommends that companies be allowed to furnish such information that has been provided by companies to the US EPA or other regulatory agency. The information could be furnished in a Form SD (see Section I.BA.) after the information has been provided to the EPA. This approach would better align companies' current regulatorily mandated and voluntary reporting with SEC requirements.

In addition, the US EPA reporting process has a data correction process built into the regulatory program due to the complex nature of GHG emissions accounting and reporting. The SEC GHG emissions data reporting requirements, no matter the approach, should include a restatement process either by referencing the EPA process or by providing such a structure within the finalized rule.

B. Scope 1 and Scope 2 emissions reporting schedule needs to be modified.

AXPC is concerned with the requirement for accelerated and large accelerated filers to report on historical Scope 1 and Scope 2 emissions data for the historical fiscal years that are included in the registrant's consolidated financial statements. By requiring such a disclosure in a 2024 filing (for fiscal year 2023), disclosure may be required for fiscal years 2020 through 2022. Gathering such data for fiscal years 2022 and earlier will be exceedingly difficult because registrants have not had systems in place to track such emissions data as would be required by the Proposed Rule.

We recommend the SEC:

i) Provide that reporting GHG emissions to the US EPA fully meets the requirements for SEC filings for Scope 1.
ii) For any new or additional emissions reporting, provide an additional two years for companies to develop and build the necessary data systems and protocols. For example, if the rule is made final in 2022, the first disclosures should be due in 2026 for fiscal year 2025 for large accelerated filers.

iii) Provide that emissions data disclosure only be required prospectively. For example, according to this recommendation, if the first fiscal year for which a large accelerated filer is required to disclose GHG emissions data is 2026, then the first time which the filer would be required to report historical data would be in the fiscal year 2027 filing, and the reported historical data would be for fiscal year 2026.
iv) Provide a safe harbor provision for Scope 1 and 2 GHG emission data for the foreseeable future or for at least a five-year period of time, or otherwise deem Scope 1 and 2 emission data as furnished and not filed.

The Proposed Rule would require a different level and type of GHG emissions reporting than registrants are currently required to report to other regulatory agencies that require GHG emissions disclosure. Achieving the new level and type of reporting would require the development of new methods and approaches to calculate GHG emissions. Expanding and changing data systems and processes to collect and report on GHG data can take a significant period of time. If the regulation were to be finalized in December of 2022, this timing would provide registrants virtually no time to modify the systems to start collecting data in January of 2023.

AXPC supports API’s comments regarding GHG intensity indicators. More specifically, that GHG emissions intensity metrics associated with Scope 1 and Scope 2 should be based upon production volumes for the oil and gas extraction industry. Production volumes is a more relevant metric for the oil and natural gas extraction industry than the revenue-based approach included in the Proposed Rule. Intensity based upon revenue, as proposed, would not provide comparable information across companies in a commodity business subject to significant price fluctuations. For example, a revenue-based metric would change dramatically depending on the price of commodities, and therefore would not offer useful insight into a company’s management of GHG emissions. For some companies in the oil and natural gas value chain that do not produce oil or natural gas, flexibility to report GHG intensity on a different basis would be appropriate. For example, throughput might be a more appropriate metric for the pipeline companies because they simply do not have production volumes to use in the proposed GHG intensity metric. For these reasons, AXPC supports flexibility in allowing companies to choose the most relevant GHG intensity metrics to their businesses.

C. Remove the requirement for historical information.

In addition, the Proposed Rule is going to create even greater inconsistencies in reported data because registrants will have to create “like-kind” inventories going back several years, the data will be less reliable and valuable for any stakeholder. Without the clarification recommended above, registrants may interpret the proposed rule to require the preparation of inventories going back several years, resulting in data that will be less reliable and thus less valuable for investors. In short, there will be little to no value to the three years of data for years prior to the effective date. Allowing each registrant time to develop data systems and processes to comply with the final rule will at least provide more consistent and useful data.

D. Reconsider the entirety of the requirements around calculating emissions to simplify and provide more clarity.

The SEC should reconsider the current Proposed Rule and either work to make the Proposed Rule compatible with the US EPA program or defer completely to the US EPA program for reporting on emissions. In addition, to drive comparability and consistency, the SEC should limit the GHG disclosure requirements to the specific GHG gases that are required by the US EPA GHG Reporting Program for a particular industry sector.

The Proposed Rule states that a registrant will be required to report total Scope 1 emissions separately from Scope 2 emissions after calculating emissions from all sources in the registrant's organizational and operational boundaries.[2] In addition, the Proposed Rule would require registrants to disclose for each of the Scope 1, Scope 2, and Scope 3 emissions data, with the emissions data disaggregated by each constituent GHG. However, the listed GHG constituents differ from what the US EPA requires. In addition, the US EPA requirements rightly provide a de minimis threshold for certain segments of reported information and constituents, which the proposed rule fails to consider.

These requirements in the Proposed Rule change the scope and details of a registrant's GHG data system and processes from what is required under the US EPA GHG Reporting Program, as well as expand the scope of GHG emissions reporting outside of a registrant's operational control, as described in further detail below in Section VI.A. of this letter. The Proposed Rule includes the following compounds as GHG emissions: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), nitrogen trifluoride (NF_3), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6). These GHG constituents differ from what the US EPA requires to be reported. We recommend that SEC maintain consistency with US EPA GHG reporting requirements with respect to the constituents that are required to be reported, or alternatively allow reporting only a carbon dioxide equivalent basis, or speciating reporting of individual GHGs only if the individual GHG is deemed to be a material percentage of the registrant's overall Scope 1 emissions.

The SEC could establish a threshold that is considered material or relevant for an industry to have to report on specific constituents or allow registrants to provide an explanation as to why certain constituents are not included. In addition, there are inconsistencies in how the SEC defines Scope 1 and Scope 3 emissions. For example (page 21344): including emissions from company-owned or controlled machinery or vehicles in Scope 1, could overlap with Scope 3 emissions from leased assets (vehicles) that a company operates.

For these reasons, the SEC should consider aligning the Proposed Rule with the US EPA program or deferring completely to the US EPA program for reporting on emissions.

---

[2] 87 Fed. Reg. at 21,468.

E. Conduct a more realistic economic analysis and extend the compliance deadlines for the inventory requirements.

The SEC has underestimated the challenges in gathering Scope 1 and 2 emissions data for a three-year time period prior to the first required reporting year. Not all registrants have three years of consistent data for Scope 2 emissions, for example. Because the reporting requirements in the Proposed Rule are not completely in alignment with the US EPA regulation, an assessment, plan of action, and implementation of changes will be needed for many registrants. Entire data and tracking systems will need to be established based on new boundaries and data sources. There can be many types and numbers of electric meters, and a single registrant may source electricity from many different utilities, leading to complexity in gathering and collating the data.

For these and other reasons, we recommend that the SEC change the GHG emissions reporting requirement to report such that companies begin an inventory of GHG emissions volumes beginning no earlier than the fiscal year two years after the effective date of the rule, and then submit the first disclosure during the subsequent year. This timetable is an equitable and appropriate approach to allow registrants the time needed to develop a responsive GHG inventory for Scope 1 and Scope 2 emissions. In addition, the SEC could consider a phased-in approach that allows registrants to first provide qualitative information and after three or so years shift to quantitative reporting.

F. Create a method for restating data and create protection from liability associated with restatements

The Proposed Rule does not provide a method for correcting or updating reported emissions when there are changes such as adjustment to emission factors or calculation methodologies, or to a registrant's assets through acquisition or divestiture. Given the limited time provided to both collect immense amounts of data and prepare filings, and these real-world adjustments that can affect emission inventories, a method to restate should be provided, and protection of companies from any associated liability should also be provided.

III. <u>Reporting on GHG Scope 3 emissions must be voluntary at this time</u>

A. Remove any mandate to report on Scope 3 emissions.

Scope 3 emissions reporting should be entirely voluntary. Scope 3 emission reporting should not be mandated at this time because of the myriad difficulties that the SEC itself recognizes in the Proposing Release compromise the usefulness of Scope 3 emissions disclosure, particularly when on the scale that the Proposed Rule contemplates. Instead of mandating Scope 3 emissions disclosure as the Proposed Rule does, the SEC should at this time allow registrants to disclose Scope 3 emissions on a voluntary basis as each registrant determines is appropriate.

B. Recognize that reporting of Scope 3 emissions does not add value and can create unnecessary risk to registrants.

Proposed Item 1504 under Regulation S-K requires a registrant to disclose its Scope 3 GHG emissions under the following two circumstances: (i) when a registrant has made an emissions goal that includes Scope 3 emissions (e.g., a net zero commitment, quantitative emissions reductions goals); or (ii) if Scope 3 emissions are "material" to the registrant. The Proposing Release further states that "[f]or oil and gas product manufacturers. Scope 3 emissions are likely to be material." As such, the Proposing Release effectively seeks to impose a Scope 3 emissions reporting requirement on AXPC's members.

AXPC's members oppose mandating disclosure of Scope 3 emissions. As a primary issue, the Proposed Rule fails to provide investors with meaningful data that will inform their investment decisions because the Proposed Rule appears to emphasize reporting quantity over quality. At this time there is an absence of a universal standardized approach regarding Scope 3 GHG emissions. The Proposed Rule would require registrants to disclose Scope 3 emissions if Scope 3 emissions are part of a net-zero goal, or if there is a substantial likelihood that a reasonable investor would consider Scope 3 emissions important when making an investment or voting decision. While AXPC supports discretion regarding materiality determinations throughout the whole rule, there are a number of issues with the SEC's Proposed Rule on Scope 3 emissions.

Second, it is not clear whether a registrant must first quantify every category of Scope 3 emissions in order to determine materiality.

Third, the Proposed Rule is unclear regarding the requirements for those categories of Scope 3 emissions which a registrant cannot calculate. Will it be sufficient for a registrant to qualitatively disclose what categories of Scope 3 emissions it has calculated and note that it will continue to assess other categories, and the materiality of those other categories, as data quality and collection improves? While we continue to oppose mandating disclosure of Scope 3 emissions in any manner, in the alternative the SEC should consider clarifying that the first step in a materiality analysis is to identify material value chain categories, and thereafter to require disclosure of only the material categories' emissions as Scope 3 emissions. Under this alternative, any material category that cannot be quantified would also have to be disclosed as being unquantifiable.

Reporting Scope 3 emissions will not necessarily lead to the consistent and comparable information the SEC aims to provide to reasonable investors. Many registrants cannot presently provide any statement of reliability of such information, as they must collect this information from third parties and do not have a method for verifying the accuracy of the information they receive. Moreover, such information is likely to be incomplete or collected in non-standardized ways by entities beyond a registrant's control. Sometimes, direct data will be available, other times emission factors may have to be used, and it is likely that in other cases only speculative estimates might be available. For example, data from small suppliers in a value chain is unlikely to be available, and staffing constraints at the supplier could prevent receipt of meaningful information to provide accurate estimates of the supplier's emissions.

As a result of these data quality concerns, the information disclosed will likely not be useful or informative for investors.

In addition, providing this information in filings will create unjustified legal risks for registrants. Under the Proposed Rule, statements will not be deemed fraudulent unless it is shown "that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith." However, the Proposed Rule provides no definition as to what the SEC means by "good faith," nor does it provide any parameters as to how the "good faith" requirement can be met. The lack of clarity raises the question as to whether "good faith" is, in reality, a "back-door" requirement that a registrant must audit its suppliers in order to fall under this protection from liability. With no intelligible definition, registrants are left vulnerable to both SEC enforcement actions and private litigation, even when they do their best to provide accurate Scope 3 information to investors.

At minimum, if the SEC does not elect to exclude Scope 3 emission reporting from any final Rule, the SEC should define "good faith." Reasonable definitions of good faith may include: i) attempts to directly get data from members of a reporting entity's value chain before using emission factors, ii) reliance on third parties engaged to independently calculate Scope 3 emissions in a reporting entity's value chain, iii) focusing only on categories of a value chain in and of themselves deemed to be material contribution to Scope 3 emissions, or iv) any combination thereof, among others.

C. Conduct a more realistic economic analysis recognizing gathering reliable data for Scope 3 is costly.

The Proposed Rule anticipates a vast increase in resources dedicated to reporting and associated costs of reporting. Moreover, these estimates do not factor in the additional costs for legal or audit fees.[3] The ability of registrants to track upstream and downstream the use and production of materials is limited in today's complex, world-wide markets. It is unrealistic and unreasonable to conclude that registrants will be able to accomplish this tracing and particularly to the level of detail that the SEC appears to seek in this Proposed Rule. The Proposed Rule does not adequately account for these costs and burdens, but instead simply sums them up in the aggregate. If these costs and burdens were fully considered, the Proposed Rule would not require disclosure of Scope 3 emissions from any entity, given the relative value of the disclosure compared with the burden of doing so.

Collecting and verifying the information from third parties will take significant time and will often depend on the willingness (and timeliness) of those third parties to provide the data. There may be a limited number of private suppliers available to a reporting entity, preventing the reporting entity from finding a supplier which is willing to provide assistance with Scope 3 reporting. In any form, mandating Scope 3 emissions is not only costly to registrants. The logistical challenges means that it will often be impractical or even impossible for registrants to gather this information in time to disclose it in their

[3] *Id*. at 21,441 n. 931.

annual filings. If the final rule requires disclosure of Scope 3 emissions, the annual report is not the appropriate place, and the SEC should consider alternative disclosure requirements.

D. Understand the limited value of Scope 3 data.

Scope 3 GHG emissions are the result of activities from assets not owned or controlled by a reporting organization, but presumed as deriving from its value chain, such as from the end use of products. The nature of Scope 3, as estimates of emissions largely beyond a reporting registrant's operation, requires the use of often unreliable assumptions. In our view, this presents an unacceptable risk of confusion that is inappropriate as a mandated disclosure requirement.

A robust ESG strategy, along with disclosure, are important to companies and stakeholders to assess the risks and opportunities a low-carbon future may present to businesses. AXPC member companies often consider their Scope 1 and 2 emissions within their assessment of potential links between climate-risk drivers and financial risk. While several of our member companies voluntarily report on Scope 3 emissions, it is important to understand the challenges of Scope 3 calculations for our industry segment and the limitations of their utility. Scope 3 emissions calculations are not an effective way to measure business risk for a specific registrant and instead may ultimately detract from an investor's or regulator's accurate assessment of an entity. For this reason, as further explained below, AXPC does not support regulations mandating the disclosure of Scope 3 emissions estimates for the upstream industry.

Reliance on broad assumptions for Scope 3 reporting can be misleading and inaccurate. Upstream independents are suppliers of raw materials, crude oil and natural gas – global commodities as opposed to finished goods. Our products are most often used as inputs in the creation of a wide variety of other finished products, goods, or services to meet growing demand for consumer products and affordable energy. Not all oil and natural gas is combusted, and there is a wide range of end products or services that can be later generated and with different emissions outputs, some even with zero emissions. As the vast majority of Scope 3 emissions are associated with this end use of subsequent goods or services, upstream companies have limited, if any, ability to accurately track them due to their fungible nature or to determine the direct impact of Scope 3 emissions.

The comprehensive nature of Scope 3 emissions calculations necessitates access to accurate information across the value chain at each data point. However, not all Scope 3 reporting is equal or comparable and although various methodologies and categories for Scope 3 reporting exist, the lack of uniformity and amorphous nature of current guidelines often make disclosures among companies incomparable. As noted above, estimating the Scope 3 emissions beyond the reporting registrant's operations involves a reliance on information outside of the reporting registrant's control, necessitating the use of significant assumptions and increasing uncertainties. Due to data gaps, boundary definitions, and ambiguous categories, Scope 3 emissions disclosures lack consistency and utility. This data needs to be treated with caution as to the reliability of such disclosed estimates. Thus, we believe requiring disclosure of Scope 3 by regulation poses an unacceptable risk of confusion among both reporting entities and the investing public, including the risk of double counting of emissions.

E. Provide greater clarity as to whether mainstream investors see value in Scope 3 data.

One of the primary interests in Scope 3 emissions is the desire to understand transition risk associated with societal and economic shifts toward a lower-carbon future. Scope 3 emission estimates can be misleading about a reporting entity's contribution to, or risk within, the global context in which they are occurring. For instance, increased natural gas sales by a registrant would translate to an increase in Scope 3 emissions disclosure even where the actual result could be reducing overall GHG emissions by displacing coal burned for power generation. This is just one example of how Scope 3 emissions can create a distorted picture.

There is a clear disconnect between the ambitions of the Proposed Rule compared to the realities of Scope 3 emissions calculations and reporting. The above issues are premised upon the value investors place upon Scope 3 emissions in their decision-making. However, it is unclear that the reasonable investor values Scope 3 emission data, even if they are more generally interested in a registrant's GHG emissions. For example, many registrants currently provide extensive climate-related disclosures through voluntary reporting. Even in these voluntary disclosures, many registrants do not presently attempt to calculate their Scope 3 emissions, and there is not widespread investor demand for such data. Moreover, the data quality concerns and difficulties with respect to gathering Scope 3 emissions data erodes whatever value it may provide any minority of investors who are interested in such data.

Has the SEC contacted a broad base of investors to ask for their input and opinion on the value of Scope 3 GHG emissions being reported? Are reasonable investors asking companies to report on Scope 3 emissions at this time? In response to the SEC's question 100 (*Federal Register* at 21381), AXPC responds that reporting on Scope 3 GHG emissions should always be voluntary.

F. Provide a broad safe harbor provision for Scope 3 emissions disclosure.

As stated above, AXPC recommends that Scope 3 emissions information be disclosed only on a voluntary basis. However, when Scope 3 emissions information is disclosed, a broad safe harbor provision should be provided. We support the Chamber's comments regarding providing a broad safe harbor provision for Scope 3 emissions disclosures.[4] Specifically, registrants will need to rely on assumptions and third-party information when calculating Scope 3 emissions, and the uncertainties associated with such information assumptions will be pronounced for Scope 3 emissions calculations. Further, companies do not control products once they are sold and the products may be used in different ways and on different timeframes, resulting in different GHG emissions. Because of these uncertainties, a broad safe harbor should be provided to registrants that provide Scope 3 emissions disclosures.

The SEC should provide greater clarity on how the good faith requirements can be met. The current safe harbor language does not provide enough clarity for registrants. The current safe harbor

[4] Chamber of Commerce Comment Letter, Section III.E.

language provides little to no protection because many Scope 3 emissions disclosures could be perceived as including a statement false or misleading with respect to any material fact. Specifically, see the SEC's statement at *Federal Register* page 21391 regarding the definition of "fraudulent statement" in the context of the SEC's comments regarding the potential difficulty of verifying accuracy of activity data from suppliers and other third parties:

> For purposes of the proposed safe harbor, the term ''fraudulent statement'' would be defined to mean a statement that is an untrue statement of material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or that constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud as those terms are used in the Securities Act or the Exchange Act or the rules or regulations promulgated thereunder.

At *Federal Register* page 21390, the SEC states that:

> 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.

By pointing out the reliance of Scope 3 determinations on third parties for data which may be difficult to obtain and verify, the SEC has provided a clear explanation as to why reporting on Scope 3 emissions should be voluntary for all registrants, or at a minimum be covered by a meaningful safe harbor provision.

IV. Third-party attestation of GHG data is not appropriate at this time

A. Remove any attestation requirement from the Proposed Rule.

The SEC should not impose an attestation requirement. The proposed attestation requirements pose significant implementation challenges. Instead of a mandatory attestation regime, assurance of climate information should be voluntary.

Under the SEC's Proposed Rule, both accelerated filers and large accelerated filers will be required to include an attestation report for their Scope 1 and Scope 2 emissions disclosure. Such an attestation report must be prepared and signed by a GHG emissions attestation provider who must meet various requirements to include expertise and independence. The attestation report itself includes several requirements in both form and content.

AXPC's members are already subject to GHG emission reporting requirements, such as under the US EPA's GHGRP. Experience with this reporting program demonstrates that the SEC's requirement that

Scope 1 and 2 emissions data be attested to and filed in annual reports is unreasonable. GHG data is collected throughout the year and there is often a delay of several months at the end of the year before all data is input. This is one of the many rationales behind US EPA's reporting deadline of March 31 for those subject to the GHGRP. California's mandatory GHG reporting rule also provides a delay in reporting, with a deadline of April 10 for each calendar year. While the US EPA rule does not require attestation, California's rule does require *verification*, and recognizing the issues related to data management and resource limitations, the California Air Resources Board verification deadline is not until August 10 of each year. Setting aside the benefits of attestation, these frameworks at least recognize the need for additional time to complete attestation, which the SEC does not.

B. Understand that the proposed attestation requirements pose significant implementation challenges.

Although AXPC understands the value of having data reviewed by qualified third parties, it is impractical for registrants to have third party attestors review the data under the proposed timeline set forth in the Proposed Rule. The timeline fails to consider human capital constraints, which we discuss in more detail in Section IV. E. below. We recommend that the SEC remove any requirement for attestation to allow registrants to work on creating GHG data systems and processes. Following the completion of this effort, the SEC could consider the level of attestation that may be appropriate. At a minimum, the SEC needs to provide a phase-in for attestation of three to five years such that limited assurance begins for the fifth fiscal year after the compliance date for §229.1504 with an allowance for registrants to request extensions. During this time, the SEC can develop clear attestor standards and guidelines, registrants can create and refine GHG data systems and processes, and more attestors can become prepared for providing such services.

C. Sufficient time and safe harbor needed for Scope 1 and 2 disclosures

While calculation of Scope 1 and 2 emissions may be a less complicated exercise than Scope 3, appropriate time is needed to verify data, and additional time is necessary to correct initial calculations, as demonstrated by the approaches adopted by US EPA and California. Given the more compressed timeframe proposed by the SEC's Proposed Rule, AXPC and its members request that the SEC either adopt a later deadline for reporting Scope 1 and 2 emissions or revise the Proposed Rule to provide a robust safe harbor for reporting these emissions in their annual report. Any safe harbor provided for Scope 1 and Scope 2 emissions should be as broad as the one suggested above for Scope 3 emissions.

D. Consider and recognize the impacts on the PCAOB and assurance firm entities.

Implementing the attestation provisions of the Proposed Rule will require much work by audit firms to position themselves for engagements on GHG disclosures. The implementation timelines proposed in this rule do not allow for these firms to adequately prepare systems and train workforce to effectively audit against the requirements set forth. AXPC supports the Chamber's comments regarding how the proposed attestation requirements pose significant implementation challenges.[5]

E. Make assurance a voluntary matter.

Attestation over GHG emissions should not be mandatory. Instead, the SEC should allow a commensurate market-based approach to third-party assurance for climate-related reporting for registrants that desire to enhance the reliability of information. Registrants are in the best position to: i) determine how to signal to investors the use of outside expertise or an enhanced reliability of their climate-related disclosures through third-party assurance, ii) how that assurance is suited to their individual circumstances, and iii) the type of assurance signal. A market-based approach allows for good practices regarding third-party assurance to evolve along with the evolution of climate-change reporting and the criteria for such reporting.

F. Conduct a more realistic economic analysis recognizing third-party attestation adds a costly layer to reporting.

Based on estimates provided by the SEC, it appears that approximately 3,850 registrants may require attestation reports. There is a significant gap between the number of available GHG emission attestation providers and the expected demand. Moreover, given the attestation requirements will apply to large accelerated filers and accelerated filers beginning in 2024, which gives registrants very little time to enhance their GHG data systems and processes in preparation for the attestation process. As a result, an attestor may have to spend significant time reviewing data and estimates. In sum, the time period provided by which registrants will be required to have third-party attestation completed is not realistic based on the number of qualified experts available.

While some registrants are already reporting in some form their Scope 1 and Scope 2 emissions, the broad and mandatory nature of this proposed reporting requirement would likely require registrants to re-analyze whether their prior calculations and determinations meet all of the requirements of the Proposed Rule. AXPC has two primary concerns in this regard. First, Scope 1 calculations are generally based on fuel consumption for most industries, which is not a relatively complicated calculation. Accordingly, the attestation requirement is unlikely to add value relative to the cost. Similarly for Scope 2 emissions, objective information like purchase records is typically used to calculate such emissions, meaning that the attestation requirement would add cost but not commensurate value in terms of giving investors greater confidence in relying on the information.

In terms of burden, ensuring that attestation providers meet all of the qualifications and also are "independent" within the meaning of the Proposed Rule will limit the available pool of providers. At this point in time, there are a limited number of providers who would be available, and many of these same firms have been employed by registrants in their efforts to generate recommendations and techniques

---

[5] *See* Chamber of Commerce Comment Letter, Section III.C.1.

for reducing GHG emissions as well as for development of voluntary reports. Consultants who are already familiar with the processes of a given registrant may not meet the independence requirements.

As API states in their comment letter[6]:

> *Some of the most well-resourced auditors are noting a significant commitment to staff and resource their operations in anticipation of addressing climate and other ESG issues companies are facing. For example, KPMG said "it planned to spend more than $1.5 billion over the next three years on climate-change-related initiatives, including training on environmental, social and governance issues for all 227,000 employees and efforts to advise businesses on how to meet net-zero emission targets." Similarly, Ernst & Young indicated the company "would spend $10 billion over the next three years on audit quality, sustainability and technology," while PricewaterhouseCoopers unveiled a five-year plan of $12 billion, including to "train employees on climate-related matters and hire 100,000 new people."[7] This underscores the scope and extent of work that would need to be conducted to implement the Proposal if it were adopted as proposed.*

Companies will be hard-pressed with internal staffing challenges, which have only been exacerbated in the COVID-19 pandemic, to meet the new requirements, even if they have already been reporting Scope 1 and 2 emissions. The new layer of regulatory assurance (even limited assurance) will require resources to be devoted to providing that assurance in preparation for the attestation exercise. Issuer companies will compete directly with the other professional services companies for the very same limited pool of human capital expertise in this area.

Finally, we highlight that the TCFD and GHG Protocol provisions do not require attestation. In addition, the US EPA does not require companies to have third-party auditing or attestation conducted.

G. Provide greater clarity around qualifications of attestation bodies.

In addition, the Proposed Rule is less than clear when it comes to defining the qualifications required of a GHG emissions attestation provider. This only further exacerbates the challenges registrants face as to the needed expertise which the SEC could draw upon in providing greater clarity. Moreover, given the conflicting deadline that the SEC has established for reporting Scope 1 and 2 emissions as compared to US EPA's program and California's program, there are real questions regarding the availability of experienced GHG attestors with the right qualifications to assist with meeting the reporting deadlines for these emissions in the Proposed Rule.

---

[6] See API Comment Letter, Section III.A.

[7] "Auditors Assess Complex New Climate Disclosures", *The Wall Street Journal*, March 29, 2022, https://www.wsj.com/articles/auditors-prepare-to-assess-complex-new-climate-disclosures-11648546201?mod=hp_minor_pos7.

H. **If attestation remains, consider the true cost and benefits, provide greater clarity, and provide an extended timeframe.**

If the SEC proceeds with these requirements, no assurance should be required given that there is no indication that registrants are not appropriately reporting their Scope 1 and 2 emissions in the current voluntary regimes. The SEC should act based on evidence that there is a real benefit in terms of quality of the data by imposing these costly additional requirements. Alternatively, to the extent registrants are obtaining assurances, the SEC's alternative that registrants disclose what type of assurance, if any, they are obtaining may be appropriate. Depending on the nature of the operations of a registrant, there may be limited value to any outside assurance because a calculation may be based on straightforward records. If a registrant has a more complex calculation, it may choose to provide an assurance level.

We therefore recommend that the SEC remove the attestation requirements to allow registrants time to enhance existing GHG data systems and processes. Furthermore, the uncertainties surrounding emission attestation and accounting call for equal, broad safe harbor protections applied to Scope 1 and 2 as those that AXPC calls for being applied to Scope 3 emissions. Alternatively, to address the liability concerns, we recommend that all emissions data required to be disclosed under any final rule be deemed furnished and not filed.

V. Voluntary actions should not impose additional disclosure requirements

There are four instances in the Proposed Rule where a registrant's voluntary actions would impose additional mandatory disclosure requirements, resulting in potentially chilling effects that would discourage corporate sustainability efforts. Namely, these are:

(i) an internal carbon price,

(ii) use of climate scenario analysis,

(iii) climate transition plan(s), and

(iv) climate targets and goals.

If a registrant maintains an internal carbon price, the Proposed Rule would require the disclosure of specific information including: i) how the internal carbon price is used, ii) the emissions to which it applies, iii) the rationale for its selection, and iv) its use in evaluating and managing climate-related risks. A similar level of detail is required for the three remaining voluntary disclosures and, in some cases, such as climate scenario analysis, the detail requested borders on confidential and proprietary information. For some voluntary actions, disclosures would need to be updated annually. It is important to note that an internal price of carbon used for scenario analysis is different from what is used for a regulatory standard or something that is self-determined.

The disclosures required under the Proposed Rule have a strong chilling effect on such voluntary actions. While registrants may have voluntarily agreed to undertake these assessments in the past, if the Proposed Rule is adopted, registrants may reconsider to what extent they wish to add to their SEC disclosure obligations.

Moreover, the disclosure of this data could have far-reaching implications for future equity offerings and registration statements and the willingness of underwriters to underwrite these deals. The Proposed Rule increases potential liability for underwriters, given the mandated disclosure of inherently forward-looking and uncertain projections. Unwillingness to underwrite various offerings will limit access to capital and ultimately harm investors.

In addition, the information required includes internal registrant data that is not currently disclosed publicly. Some registrants may have developed proprietary technology to assist with emission reduction efforts, identified alternative operating methods to assist with furthering climate goals, or otherwise developed a confidential corporate growth strategy targeting low-carbon assets to assist with managing climate risks. The Proposed Rule is vague with respect to the level of disclosure detail required and may increase liability risks regardless of whether the SEC requires granularity. A lack of specification regarding the level of detail creates risk of shareholder claims for misleading statements, and a requirement for significant detail risks disclosure of what would otherwise have been confidential business information now available in the public domain and for consumption to a company's competitors.

We recommend, therefore, that the SEC remove the additional disclosure requirements associated with the above voluntary actions and instead recommend that registrants be required to disclose the information if the information is material. Alternatively, the SEC could limit disclosure to those voluntary actions which have already been disclosed.

VI. Registrants need to have flexibility in the selection of organizational boundaries

In disclosing its Scope 1, Scope 2, and, where applicable, Scope 3 emissions, under the Proposed Rule, a registrant is required to describe the methodology it has utilized in calculating such metrics. This would include a registrant's organizational boundaries and operational boundaries. Based on the definitions of the Proposed Rule, operational boundaries refer to "the boundaries that determine the direct and indirect emissions associated with the business operations owned or controlled by a registrant." Organizational boundaries, by contrast, are "the boundaries that determine the operations owned or controlled by a registrant for the purpose of calculating its GHG emissions."

A. Allow flexibility with selecting organizational boundaries.

The proposed amendments to Regulation S-K by Item 1504(e)(2) for disclosure of GHG emissions stipulates that "[t]he organizational boundary and any determination of whether a registrant owns or controls a particular source for GHG emissions must be consistent with the scope of entities, operations, assets, and other holdings within its business organization as those included in, and based upon the same set of accounting principles applicable to, the registrant's consolidated financial statements." While AXPC acknowledges that this method would most closely align with the registrant's consolidated financial statements, the proposal for GHG emissions to be calculated on the same basis as the consolidated financial statements is extremely burdensome and highly impractical, if not impossible, for registrants to apply consistently or accurately. The GHG Protocol which is heavily leveraged by the Proposed Rule recognizes the complexities of boundary selection for GHG inventories and allows registrants the ability to establish the appropriate organizational boundary for their business and utilize the method that can be most accurately and consistently applied (financial control, operational control or equity share methods).

US GAAP contains a complex set of rules that registrants must evaluate to properly prepare consolidated financial statements. In particular, AXPC members often utilize proportionate consolidation pursuant to ASC Topic 810 – *Consolidations*. Proportionate consolidation pursuant to ASC 810-10-45-14 requires that a registrant engaged in oil and gas exploration and production to "account in its financial statements for its pro rata share of the assets, liabilities, revenues, and expenses." This consolidation method results in a registrant consolidating their undivided ownership interest in all assets and associated liabilities and recognizing revenue and expenses on the basis of their undivided ownership interest. Ownership interests in oil and gas exploration and production activities can range from less than one percent to 100 percent.

Registrants may have limited or no ability to obtain the necessary GHG emissions information for assets that they do not have operational control (based on operational terms pursuant to the GHG Protocol) because the agreements that govern such joint operations do not require delivery of such information to non-operating owners. For example, under the Proposed Rule registrants would need the operating owner of extractive industry assets to provide Scope 1, 2 and 3 emissions at the asset level, further disaggregated by emissions type, in order to allow non-operating owners to properly calculate their proportional interest the GHG emissions and comply with the proposed GHG disclosures. Additionally, not all operating owners of such assets are SEC registrants whereby they are not subject to and likely would not have the information required to comply with the Proposed Rule. Furthermore, extractive industries have multiple undivided interest types of which one type, a working interest, applies to assets, liabilities and operating expenses and the other type, a revenue interest, applies to revenues and revenue associated expenses, and the Proposed Rule does not clarify which undivided interest registrants would use for the GHG disclosures under the proposed GHG disclosure rules.

VII. <u>The Proposed Rule must be modified to stay within the Commission's legal authority.</u>

The Proposed Rule requires reporting on climate-related risk and GHG emissions that goes beyond the authority of SEC. AXPC hereby incorporates by reference the entirety of API's comments in Section I of their comments.

On April 25, 2022, a group of 22 esteemed professors of law and finance led by Lawrence Cunningham, issued a response to the SEC's Proposed Rule, that focused on the SEC's overall authority. They also indicate that many of the individuals that petitioned the SEC to draft this Proposed Rule are heavily skewed to social and political investment firms and foreign entities. Below are two excerpts that are particularly meaningful to the issue of the SEC's authority and potential drivers to the issuance of this Proposed Rule:

> *The undersigned, a group of professors of law and finance, are concerned that the SEC's recent proposal to impose extensive mandatory climate-related disclosure rules on public companies (the "Proposal") exceeds the SEC's authority. In addition, rather than provide "investor protection," the Proposal seems to be heavily influenced by a small but powerful cohort of environmental activists and institutional investors, mostly index funds and asset managers, promoting climate consciousness as part of their business models.*[8]
>
> *The following analysis raises concerns that the Proposal is neither necessary nor appropriate for either investor protection or the public interest and will not promote other statutory goals. The SEC would do better to withdraw the Proposal and revisit the subject with a fresh approach focused on America's ordinary investors rather than an elite global subset.*

We strongly recommend that the SEC carefully review and consider these distinguished experts' opinions and analysis prior to finalizing a rule. This level of increased reporting will not necessarily achieve the SEC's claims that climate disclosures "will promote efficiency, competition, and capital formation." The Proposed Rule will likely saddle registrants with new costs, discourage private firms from going public, and may even encourage some public firms to go private.

VIII. <u>The required disclosure of confidential strategy, business model, and outlook needs to be removed</u>

The Proposed Rule requires a registrant to describe and provide information on several key strategic issues and strategies. AXPC recommends that the SEC remove any requirement to disclose business strategies, models, and outlooks that are typically considered confidential business information. This appears to be how the SEC manages other financial topics.

---

[8] "Lawrence A. Cunningham, Professor of Law, George Washington University, Corresponding Author, on Behalf of Twenty-Two Professors of Law and Finance", submitted to the SEC April 25, 2022. https://www.sec.gov/comments/s7-10-22/s71022-20126528-287180.pdf

Examples of such potentially confidential information includes requiring a registrant to report on:

- The actual and potential impacts of climate-related risks on a registrant's strategy, business model, and outlook.
- Current and forward-looking disclosures that facilitate an understanding of whether the implications of the identified climate-related risks have been integrated into the registrant's business model or strategy, including how any resources are being used to mitigate climate-related risks. (§§229.1502(b) and (c)).
- A description of the resilience of business strategy to potential changes in climate-related risks, and also scenario analysis information (if scenario analysis is used).
- The resilience of the registrant's business strategy in light of potential future changes in climate-related risks. (§229.1502(f)).
- The description of the transition plan if the registrant has adopted a transition plan. This disclosure would require a discussion of how the registrant plans to mitigate or adapt to any identified transition risk. (§229.1502(c)(2)(ii)).

Such disclosures could include confidential registrant information regarding future strategies and markets and put a registrant at a competitive disadvantage. More generally, these disclosure requirements also have a potential chilling effect on the use of climate risk assessment and management tools. The Proposed Rule creates a disincentive for registrants to be proactive in adressing climate risks or resolving proposed shareholder resolutions.

IX. The overall cost to comply is significant

A. The cost-benefit analysis in the Proposing Release is inadequate to justify the entirety of the proposed rules.

AXPC supports the Chamber of Commerce's comments to the SEC regarding how the cost-benefit analysis in the Proposing Release, specifically the comments found in Section IV.A of the Chamber of Commerce's comments.

Further, the SEC does not provide adequate information for investors to fully evaluate their assumptions. Not all registrants have conformed to or follow all of the requirements of the TCFD programs. The proposed timeline does not allow sufficient time for a complete analysis. The cost of registrants trying to report in alignment with just certain aspects of TCFD for their first time on a voluntarily basis can be around $500,000. This does not account for the level of rigor, financial line items, attestation, and liability costs associated with complying with this Proposed Rule. The actual cost for complete alignment to TCFD could be up to $1,000,000 per registrant over several years. This does not include the annual cost associated with preparing for and conducting attestation.

Entire data systems, policy structures, programs, and other processes would need to be established and implemented to comply with the Proposed Rule. The SEC has made too many assumptions regarding TCFD having been adopted by companies. The Proposed Rule states that the SEC has proposed to use the TCFD framework due to the framework's wide acceptance by issuers, investors, and other market participants, and that this acceptance should reduce the compliance burden for issuers and investors alike. However, the TCFD 2021 status report was based on review of 1,651 TCFD reports demonstrating that although used, there are plenty of issuers and investors not familiar with the framework. Moreover, even those registrants that have disclosed to be in "alignment" with the framework do not always address every recommendation. In fact, the statistics in the TCFD 2021 status report show the gap between current practice (i.e., the degree of implementation of the various TCFD recommendations) and the Proposed Rule.

Did the SEC consider the potential impacts on a registrant regarding the mandate to consider:

- Costs to augment existing or acquire new human capital expertise,
- Impacts to capital formation,
- Adverse impact on capital formation of requiring multiple years of disclosure in IPO S-1s and deSPAC S-4s,
- Adverse impact on business combination activity of requiring multiple years of disclosure in S-4s for non-reporting targets,
- Burden on small and mid-cap registrants, such as those that qualify for scaled disclosure of financial information and exceptions to 404 requirements,
- Unavailability of or quality concerns with climate data from an asset(s) or ownership interest(s) that the registrant does not have operational control over pursuant to the GHG Protocol
- Unavailability of or quality concerns with climate data from value chain participants not subject to the rule,
- Impact on capital formation of subjecting underwriters to liability for climate disclosures,
- Attestation costs, and
- Emissions reporting framework costs.

As proposed, the SEC's climate rules make it difficult, if not impossible, for emerging entities to go public. Certain industries may be perceived to be at greater susceptibility to climate risk because of inflated Scope 3 emissions calculations that result from the lack of any guidance from the SEC on how to approach addressing such emissions. Many entities considering going public may choose not to do so because of increased reporting burdens and greater risk of liability that flows out of the SEC's Proposed Rule, stymieing capital formation. The Proposed Rule does not address these concerns.

X. <u>The economic analysis must include a more fulsome evaluation of the actual costs to comply</u>

The Proposed Rule, taken as a whole, would impose a vast and costly new reporting regime on public companies that goes well beyond the climate disclosures that registrants generally make under current disclosure requirements and market practices. Indeed, it is exceedingly difficult from the Proposed Rule to determine the outer limits of what an issuer would have to disclose.

The Proposed Rule includes a significant number of new compliance requirements and burdens that may not justify the identified benefits to investors and may, counter to the SEC's goal, lead to less comparability among companies due to the lack of current disclosure standards. The significant compliance requirements and associated burdens outweigh any potential benefits, particularly when compliance costs and combined with the risks of unnecessarily confusing investors and limiting access to capital note above. According to the cost estimate provided by the SEC, the Proposed Rule would raise the overall cost burden associated with registrant reporting from a total of approximately $3.9 billion to approximately $10.2 billion.[9]

AXPC is concerned that this SEC estimate falls short of a full evaluation of costs to registrants. For example, the proposed disclosure regime will require registrants to disclose a whole host of financial metrics relating to severe weather events, transition activities, and risk mitigation expenditures. This exercise, in many cases, will require the development of new standards, an overhaul of accounting systems, and the creation of new audit expertise. In addition, there are entire data systems, policy structures, programs, and other processes which would need to be established and implemented. There will also be incremental personnel that will need to be added to support the compliance and reporting requirements.

We support the Chamber of Commerce's comments regarding how compliance with the Proposed Rule would impose significant burdens and costs on registrants.[10] The Proposed Rule also creates substantial new liability exposures and considerations, which registrants will have to account for and mitigate. Following the timeline referenced in the SEC's rule preamble, which assumes an effective date for a final rule in December of 2022, the largest registrants in the United States will be expected to report climate-related information in line with the Proposed Rule in their FY23 annual report, with large public filers following in FY24 and smaller registrants in FY25. These timelines do not provide sufficient time to develop internal standards and processes or time to overhaul internal accounting systems. The cost to implement these standards and processes is unduly burdensome.

XI. <u>The timing of disclosures needs to be extended</u>

The SEC should, in any final rules, extend the initial compliance deadlines by at least two years to provide registrants sufficient time to develop systems, controls, and audit methodologies for any new disclosure requirements that are ultimately adopted. This additional time will allow the SEC to better promote more reliable disclosures than would otherwise be possible in a hurried compliance period. The

---

[9] Fed. Reg. at 21461.

[10] *See* The Chamber of Commerce's comments, Section I.B.1.

timing of disclosure during the annual reporting process also presents compliance challenges. The SEC's resource extraction payments disclosure rules provide that the related Form SD is to be filed by 270 days after the preceding year-end. We believe this precedent could fit here as well and recommend allowing 270 days after year-end is an appropriate timeframe to report on the GHG data. This timing would also correspond better with the US EPA emissions review and publication process, which usually is completed by the beginning of October.

A. The SEC should extend the effective dates of any final rules for emission disclosures.

A significantly longer transition period is necessary for compliance with emission disclosures in view of: i) the scope and breadth of the Proposed Rule and ii) the sheer number of new processes, procedures and controls companies will be required to develop to assure their compliance. We recommend that the SEC have the GHG emissions data disclosure compliance and assurance dates become effective two years beyond the dates set forth in the Proposed Rule in recognition of the extremely complex and unprecedented nature of the accounting work, software development, training, and outside consultant demands that would be associated with the Proposed Rule. Additionally, to accommodate special challenges posed in mergers and acquisitions, we recommend on an ongoing basis that the SEC permit companies to delay reporting on acquired businesses for an additional year from the date of acquisition.

B. Create a realistic schedule that provides adequate time for registrants to comply.

The Proposed Rule requires the filing of disclosures on a schedule that does not provide adequate time to gather data and prepare the disclosures. Further, the schedule is inconsistent with the US EPA GHG reporting requirements. For example, large accelerated filers would be required to submit their climate-related disclosures with Form 10-K, which is due 60 days after the end of the fiscal year. Sixty days is not adequate time to collect and process all of the emissions data required by the Proposed Rule. For most registrants (even large accelerated filers) there will be significant challenges in providing climate-related disclosures by the required deadlines.

We do not think any benefit associated with the disclosures being ready at the same time as the annual report outweighs the benefit of allowing registrants more opportunity to take a more reasonable period of time to prepare disclosures that will, in turn, be more reliable because of the ability to collect the requisite data and subject the information to a disclosure process and set of controls uncompromised by rushed timeframes. The Proposing Release acknowledges as much by permitting registrants to make use of fourth-quarter estimates under certain circumstances under proposed Regulation S-K Item 1504(e)(4)(i) as long as the registrant promptly discloses in a subsequent filing any material difference between the estimate used and the actual, determined GHG emissions data for the fourth fiscal quarter.

Even if money were no object, it could take years to build and enhance data systems to accommodate these requirements. It is even more complex if the registrant is also having to gather and report on the data when the systems are being enhanced. An expedited or rushed approach could create more inconsistencies and provide information that is even less useful to a reasonable investor.

Indeed, the SEC providing registrants with the ability to use a fourth quarter estimate is not only an accommodation the SEC has never needed to suggest before, but it underscores that the SEC recognizes that many registrants simply will not be able to meet the deadlines for a variety of reasons. For example, key data needed to complete the required attestation may not arrive until it is too close to the deadline to be prepared for external review. Moreover, including data based on these types of estimates, subject to future correction when the actual data is available, would pose significant challenges for any third-party attestation service provider of the resulting disclosure and could provide fodder for opportunistic third parties not motivated by the best interests of investors. This accommodation is not adequate to address the risk of being second-guessed and the attendant liability risk. It also does not do anything to ease potential investor confusion – if anything, it creates liability risk and likely spurs confusion. Using an estimate for the fourth quarter would appear to require a registrant to perform the following steps:

1. Determine actual emissions for Q1-Q3,
2. Estimate emissions for Q4,
3. Provide an attestation report for Q1-Q4,
4. Determine actual emissions for Q4, and
5. If there is any material difference between the estimate for Q4 and the actual, determined GHG emissions data for Q4, disclose in a subsequent filing and provide an attestation report.

Providing a longer time period for the reporting of GHG emissions would avoid the multiple steps required to make use of the fourth quarter estimate option. Companies may report their GHG emissions to US EPA, one or more states, in some cases to jurisdictions outside the US, and also under one or more voluntary disclosure frameworks. Adding an SEC requirement which requires using different GHG reporting metrics from the other reporting requirements will add to the complexity and burden of GHG emissions reporting. It will also result in greater cost since the proposed process basically requires a registrant to perform most of the process twice in a year.

Two prominent reasons for providing a later due date for submitting disclosures include the time required to receive information from utilities and the time required to receive information from third parties in the registrant's value chain. To report Scope 2 emissions, a registrant needs to receive usage information and emission factor information from its utility providers. This is information is not necessarily available soon after the end of the fiscal year. To report Scope 3 emissions, a registrant may need to receive emissions information from a number of third parties. These thirds parties will need time to assemble their emissions data at the end of the fiscal year (including waiting for utility data) before providing the data to the registrant. It is also important for the SEC to provide the averages, assumptions, and other factors that they expect registrants to use when calculating Scope 3 emissions.

In addition, accelerated and large accelerated filers with a calendar fiscal year would be required to make Scope 1 emissions disclosures under the Proposed Rule *before* the March 31 US EPA deadline for similar information. Rather than front-running the US EPA reporting process or providing the unusual workaround that permits disclosure of GHG emissions on the basis of a quarterly estimate, the SEC should delay the reporting deadline to later in the year.

C. Require certain climate-related disclosures less frequently than annually.

Considering the significant time horizons over which the effects of climate change may be experienced by a registrant, annual reporting of certain climate-related disclosures may in many cases be unnecessary. Accordingly, registrants should instead be permitted to provide certain of the climate-related disclosures on a less frequent basis. The disclosures set forth in § 229.1500 – § 229.1503 and § 229.1505 – §229.1506 could be submitted at an interval of three to five years, while the GHG emissions metrics set forth in § 229.1504 could be submitted annually.

Other specialized SEC disclosures, such as Chief Executive Officer pay-ratio disclosure in the selection of the median employee and "say when on pay" voting (giving registrants the option to seek the approval each one, two, or three years), also permit registrants more leeway beyond an annual cadence. Thus, there is already a basis within the SEC's rules for permitting disclosure less frequently than annually. A less-than-annual disclosure better reflects the long-term nature of climate-related risks and how they are managed and can help counter any short-term pressures that might not yield the most sustainable outcomes.

XII. The SEC should revise and expand the disclosure safe harbor provision protection

A. The SEC should revise the disclosure safe harbor protection.

Reporting concepts, measurement tools, methodologies, and technologies are evolving at a rapid pace, and we continue to learn more about climate science. Elements of the Proposed Rule, such as targets and goals, are inherently subjective and often forward-looking; targets and goals are also often prepared only for internal management analysis on a proprietary basis and are not necessarily designed with public disclosure in mind. Assurance principles are unsettled, as are key concepts of legal liability around climate information. The Commission and its staff's familiarity with climate-reporting concepts and methodologies is also in a nascent state. In light of these factors, AXPC has significant concern regarding the potential for second-guessing and liability regarding the disclosure of climate-related information were the Proposed Rule to be enacted.

We appreciate the Commission's recognition of the liability environment and believe the proposed Scope 3 safe harbor is a good starting point for any enhanced climate disclosures. However, the safe harbor must be significantly expanded to be meaningful. Our concern is that the proposed safe harbor from Scope 3 emission disclosure liability is too narrowly crafted and does not provide adequate relief. Furthermore, there should exist a meaningful safe harbor not just for Scope 3 emission disclosures but should cover the entirety of any final rules in light of the unique challenges that the SEC itself recognizes registrants must overcome to meet the proposed climate-related disclosure obligations.

AXPC also recommends that the SEC remove the Proposed Rule's obligation to include the required information in reports "filed" with the SEC. For any information that the SEC ultimately requires to be submitted, the SEC should allow registrants to provide those disclosures as part of a separate climate-related report which is formally "furnished" to the Commission. Additionally, if the climate-related financial statement metrics disclosure requirement is maintained in substantially the form proposed, we recommend permitting these disclosures to take place outside of the audit process. AXPC also supports API's comments regarding allowing registrants to furnish, rather than file, reports. Specifically, AXPC points to the comments made by API in Section IV.B. of their comment letter.

CONCLUSION

AXPC thanks the SEC for the opportunity to provide input on climate-related disclosure. We applaud efforts to enhance the information provided to investors but believe that the Proposed Rule does not accomplish the SEC's stated goals. We would welcome further opportunities to discuss these important issues. Please do not hesitate to contact us with any questions.

Sincerely,

Anne Bradbury
CEO
American Exploration and Production Council
www.axpc.org