ConocoPhillips

Kelly B. Rose
Senior Vice President, Legal
and General Counsel

P.O. Box 4783
Houston, Texas 77210
[redacted]

June 11, 2021

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: SEC Request for Public Input

ConocoPhillips is the world's largest independent exploration and production ("E&P") company based on production and proved reserves, headquartered in Houston, Texas, with operations and activities in 15 countries. As an E&P company, we define success as meeting society's energy needs while reducing operational impacts, advocating for sustainable policy, valuing community input, building resiliency and creating shared value for stakeholders.

We respectfully submit this letter in response to the March 15, 2021 request for public comments on whether the disclosure rules and regulations of the Securities and Exchange Commission (the "SEC") appropriately address climate change risks, uncertainties, impacts and opportunities. ConocoPhillips recognizes that human activity, including the use of fossil fuels, contributes to increased atmospheric greenhouse gas ("GHG") concentrations, which can affect the climate. We have long recognized the need for action to address climate change and have been reporting on our performance to reduce our GHG emissions since 2003. We understand investor interest in obtaining decision-useful information around climate-related risks.

ConocoPhillips recommends any environmental, social and governance ("ESG") disclosure requirements adopted by the SEC adhere to the five key principles addressed below: standard setting and regulation; a hybrid approach to disclosure; assurance requirements; materiality; and liability exposure.

Standard Setting and Regulation

We recommend that the SEC leverage existing reporting frameworks and standards to establish ESG reporting standards. Using frameworks and standards that have already proved flexible and adaptable within the U.S. economy would enable the SEC to implement disclosure requirements more quickly and efficiently, and would minimize disclosure- and compliance-related burdens on companies. Both the framework promulgated by the Task Force on Climate-Related Financial Disclosures ("TCFD") and the standards established by the Sustainability Accounting Standards Board ("SASB") have already emerged as foundational disclosure tools for company reporting.

It is important to distinguish between frameworks and standards. Frameworks provide companies flexibility to tailor disclosures to their specific circumstances, while standards set sector-specific reporting metrics. Frameworks such as TCFD's have been mutually agreed upon by cross-sector companies, investors and other market participants and reflect a consensus view of decision-useful disclosure informed by industry and technical expertise. A framework like TCFD's also allows quantitative and qualitative information to be presented together, giving investors sufficient context to understand the full range of climate risks and opportunities faced by companies such as ours. However, climate change risks and opportunities can manifest themselves differently across various industries. Therefore, any broad-based framework should be combined with sector-specific metrics, such as those established by SASB, in a "hybrid" model (discussed below). Sector-specific standards offer both companies and investors the advantages of highlighting industry-specific risks and their impacts on business value, and will provide investors with decision-useful information while ensuring consistency and comparability of information within a given industry.

We also recommend using a third-party standard setter with a regulatory reporting relationship mirroring that of an established structure, such as that of the Financial Accounting Standards Board. The SEC should also quickly build internal expertise in order to retain regulatory review of ESG and climate risk disclosures, thus avoiding conflicts of interest with third-party for-profit ranking entities.

Standards-setting organizations and industry organizations, working together, could effectively develop appropriate standards. We believe that the development of initial standards and their refinement over time can be well served by cross-sector collaboration. For example – working groups or round tables with experts from a range of subject industry and commercial sectors can provide effective input to address the intent of the policy while also addressing the differences between sectors and the inter-operability of the standards as they are first applied and further refined over time. Industry associations can also play an important role in supporting these types of collaborations through their research capability and ability to collect and consolidate member input.

As the chosen third-party framework evolves, the SEC should adapt to changes in the disclosure regime. Near-term standards should be implemented using a phased approach that allows issuers time to develop necessary processes and controls. Disclosure under the chosen standard should be based on SEC-defined materiality assessments (discussed below). Consideration should also be given to the need to harmonize the SEC's ESG disclosure requirements with other government-required reporting regimes, such as the Environmental Protection Agency's GHG Reporting Program.

A Hybrid Approach to Disclosure

In recognition of inter- and intra-industry variations and in light of ever-evolving ESG topics, we believe a "hybrid" approach that provides both adaptability and comparability is best framework for disclosing decision-useful information for investors, while minimizing categorical discrimination among industries and also ensuring consistency and comparability across industries.

A hybrid-based approach would provide the necessary flexibility to focus disclosures on risks identified by individual companies, and some level of prescription would give the disclosures greater credibility and ensure comparability across issuers, sectors, and jurisdictions. For example, the energy industry is not monolithic: E&P companies face different risks and opportunities than do fully integrated companies that market consumer products.

As discussed above, the difference in language is again important: a global standard with prescriptive metrics is unlikely to satisfy investors' needs for sector-specific information across different jurisdictions. Minimum disclosures should be used sparingly, as they can serve to obscure material information with limited information that, while interesting, may not be material and decision-useful.

That said, the SEC should ensure some level of interoperability and equivalency between global standards and SEC requirements. We would advocate for equivalency recognition of rules imposed on U.S. issuers by foreign governments that would be consistent with an SEC prescriptive disclosures requirement.

Assurance Requirements

As ESG reporting matures, there will be rising expectations of transparency and comparability, as well as demand by investors and other stakeholders for complete and accurate information. Audit or assurance services could bring accountability, objectivity, and a standards-based, consistent framework to required disclosures. Any material information presented would be best served if translated into data that is credible and calculable for investors. Without such validation, investors and other stakeholders may not be confident in the accuracy of the information provided.

To emphasize the importance of assurance requirements, we have already observed that investors and sell-side analysts use our quantified disclosures to compare our performance with that of peer companies. Credit and ESG rating agencies also use this information to evaluate and assess the environmental performance of a company versus industry peers and across industries.

Typically, assurance services are best suited for companies or reporting requirements that are more mature in nature, with well-defined frameworks and standards by which to validate information. There are a number of assurance frameworks already in use for climate-related data and information. Given these existing resources, the SEC should consider allowing all forms of assurance in the first instance.

Materiality

The concept of "materiality" for climate-related disclosures should maintain the well-established definition stated in *TSC Industries, Inc.* v. *Northway, Inc.* that information is material if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to vote, or would consider disclosure of an otherwise omitted fact as significantly altering the total mix of information available to investors.

This definition of materiality is foundational to the function of U.S. capital markets. Other frameworks for ESG disclosure have competing and non-aligned definitions of materiality. But using the *TSC Industries* definition would ensure that investors receive the information needed to make informed investment and voting decisions. The SEC has historically maintained that each issuer or other person obligated to disclose should determine disclosure obligations in context of the specific facts and circumstances, which allows issuers and other obligated persons to appropriately tailor their reporting. Disclosures should not be tiered or scaled based on the size and/or type of the registrant. Rather, they should only be tiered or scaled based on the materiality of the risk to the company, its investors, or their voting decisions.

Liability Exposure

The SEC should apply existing liability protections and safe harbors found in current reporting regulations to ESG information. Any regulations requiring prospective ESG information should continue providing safe harbor provisions, such as those contained in the Private Securities Litigation Reform Act, that protect reporting companies and management from liability for making good-faith projections and forecasts. An approach like this would be consistent with how forward-looking financial information is treated today.

In addition, in view of the ever-evolving nature of ESG topics and the significant judgments relating to materiality that may be required, we would advocate implementation of a framework that allow ESG reporting and disclosures to be *furnished*, rather than *filed* under the Securities Exchange Act of 1934.

* * *

We would be happy to respond to any questions you have with respect to this letter or our views on ESG disclosure. If you have questions or would like to discuss more generally, please contact Kelly Rose at [redacted] or Shannon Kinney at [redacted].

Very truly yours,

Kelly B. Rose
Senior Vice President, Legal and General Counsel