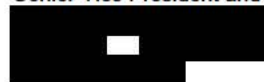




Freeport-McMoRan Inc.  
333 North Central Ave.  
Phoenix, AZ 85004

Douglas N. Currault II  
Senior Vice President and General Counsel



June 11, 2021

Via Email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Chairman Gary Gensler  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: Request for Public Input on Climate-Related Disclosures

Dear Chairman Gensler:

Freeport-McMoRan Inc. (Freeport) appreciates the opportunity to submit this letter in response to the March 15, 2021 request for public comments on whether the current disclosure rules and regulations of the U.S. Securities and Exchange Commission (the Commission) appropriately address climate change. Freeport is one of the world's largest publicly traded copper producers. Our portfolio of assets includes the Grasberg minerals district in Indonesia, one of the world's largest copper and gold deposits; and significant mining operations in North America and South America, including the large-scale Morenci minerals district in Arizona and the Cerro Verde operation in Peru. We embrace responsible production as central to our strategy of being foremost in the global copper industry.

Freeport has a long history of robust sustainability programs and reporting. Earlier this year, Freeport issued its 20<sup>th</sup> Annual Sustainability Report and last year published its inaugural Climate Report.<sup>1</sup> Since 2005, Freeport has reported its sustainability performance under standards of the Global Reporting Initiative (GRI) and now also reports on its performance in alignment with standards of the Sustainability Accounting Standards Board (SASB). Freeport is also committed to aligning its strategy and disclosures in the coming years with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). In addition, Freeport is continuously striving to embrace evolving stakeholder expectations and to implement best practices.

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<sup>1</sup> Freeport-McMoRan, 2020 Annual Report on Sustainability, *available at* <https://www.fcx.com/sites/fcx/files/documents/sustainability/2020-annual-report-on-sustainability.pdf>; Freeport-McMoRan, Building on Strength 2019 Climate Report, *available at* <https://fcx.com/sites/fcx/files/documents/sustainability/2019-climate-report.pdf>.

Freeport understands the importance of climate change and acknowledges the call by various stakeholders for companies to follow standardized and methodologically sound frameworks for climate-related disclosures. Accordingly, Freeport supports the Commission's efforts to comprehensively address climate-related disclosures, potentially through the creation of a harmonized disclosure framework. Freeport urges the Commission to be guided by the following principles as part of this effort.

**1. Any climate-related disclosure framework should be a combination of principles-based and mandated climate-related metrics and data.**

Climate change is a complex global issue and the impacts, risks and opportunities associated with climate change vary across industries and companies. Accordingly, we believe that a combination of principles-based disclosures and mandated climate-related metrics and data would be appropriate. We highlight that in 2018 the Commission issued new mining disclosure rules, which used this combination approach with respect to a multifaceted topic in our industry.

- a. Any climate-related disclosure framework should be principles-based, rooted in the well-established concept of materiality, and designed to facilitate an understanding of each issuer's climate-related impacts, risks, and opportunities.*

In considering future rulemaking for climate-related disclosures, we urge the Commission to promote a materiality-centered, principles-based disclosure framework. The Commission's existing disclosure framework is rooted in the well-established concept of materiality. Inundating investors with information without regard to materiality would undermine the effectiveness of the Commission's disclosure framework, which is intended to provide investors with information that is objectively important for making informed investment and voting decisions. The concept of materiality serves the dual purposes of highlighting information that a reasonable investor would likely consider important while filtering out relatively unimportant details that could confuse or overwhelm investors or obscure material information.

As demonstrated by Freeport's most recent annual report on Form 10-K, the appropriate application of the existing disclosure requirements should lead issuers to disclose, among other things, any potential material impacts on performance from new regulations, market trends in responding to climate change and the energy transition that could impact demand, and the potential operational consequences of physical climate risks.<sup>2</sup>

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<sup>2</sup> Freeport-McMoRan Inc., Annual Report on Form 10-K for the fiscal year ending December 31, 2020 at 45, 51, 53, and 60 available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/831259/000083125921000009/fcx-20201231.htm>.

***b. Disclosure of any newly mandated climate-related metrics and data should be confined to those that are reasonably measurable, quantifiable, calculatable, widely reported and widely used, and under the issuer's direct control.***

The Commission's approach to climate-related disclosure requirements should recognize the difference between quantifiable information that issuers can reasonably disclose and categories of information where only a qualitative, principles-based approach to disclosure is appropriate. When considering whether to require climate-related disclosure of quantifiable metrics and data, such as greenhouse gas (GHG) emissions, the Commission should consider both the importance of such information to investors as well as the degree to which such information is measurable, quantifiable, calculatable, widely reported and widely used, and under the issuer's direct control. Applying these criteria, we are prepared to support the Commission proposing a rule that would supplement traditional principles-based disclosure with a requirement to disclose, consistent with standards developed by the Greenhouse Gas Protocol, scope 1 and scope 2 GHG emissions annually.

Freeport and other issuers currently confront substantial challenges with both the quality of climate-related data and the ability to verify and confirm statements that could be included in climate-related disclosures. For example, Freeport currently discloses its scope 1 and scope 2 GHG emissions in its annual sustainability and climate reports.<sup>3</sup> These GHG emissions are verified against the Greenhouse Gas Protocol published by the World Resources Institute and the World Business Council on Sustainable Development, which allows for the use of either an estimated grid factor or market-based approach to calculating scope 2 GHG emissions.<sup>4</sup> The scope 3 GHG emissions associated with Freeport's (or any issuer's) operations are comprised of the scope 1 and scope 2 GHG emissions of other businesses. Freeport also currently discloses an *estimate* of its scope 3 GHG emissions, but notes that these estimates are subject to a significant degree of uncertainty because such emissions are comprised of the scope 1 and scope 2 GHG emissions of other businesses and beyond Freeport's direct control.<sup>5</sup> Given the high degree of uncertainty associated with the current practice for estimating scope 3 GHG emissions, Freeport does not believe it would be appropriate for the Commission to require disclosure of scope 3 GHG emissions at this time. In the future, as estimation processes for scope 3 GHG emissions mature, it may be appropriate for the Commission to consider a proposal to add that category to its emissions disclosure requirements.

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<sup>3</sup> Freeport-McMoRan, 2020 Annual Report on Sustainability at 59, 86-88, *available at* <https://www.fcx.com/sites/fcx/files/documents/sustainability/2020-annual-report-on-sustainability.pdf>; and Freeport-McMoRan, Building on Strength 2019 Climate Report at 4, 11, 19, *available at* <https://fcx.com/sites/fcx/files/documents/sustainability/2019-climate-report.pdf>.

<sup>4</sup> The Greenhouse Gas Protocol, Chapter 6, *available at* <https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf>.

<sup>5</sup> Freeport-McMoRan, 2020 Annual Report on Sustainability, *supra* note 5. at 88; Freeport-McMoRan, Building on Strength 2019 Climate Report, *supra* note 5. at 19.

**2. The benefits of any mandated climate-related disclosure should outweigh the associated costs to issuers.**

In addition to the central concept of materiality, the anticipated benefits of any mandated climate-related disclosure should outweigh the associated costs to issuers. Significant resources, both time and money, are required to support the disclosure process, which involves compiling and analyzing underlying facts, assessing materiality, and drafting responsive disclosure. Issuers employ varying methods to manage this process, ranging from some employing large internal teams who oversee substantially all aspects of this process to others who coordinate extensively with outside counsel and advisors. Significant resources are also required when establishing new processes, controls, and procedures to comply with any new disclosure requirements. The cost of disclosure is borne by the issuer, which ultimately impacts shareholder returns. Accordingly, we strongly urge the Commission to study whether the anticipated benefits of any mandated climate-related disclosure requirements to investors would outweigh the associated compliance costs to issuers.

**3. The Commission should provide issuers with sufficient time to comply with any new climate-related disclosure requirements.**

We urge the Commission to provide delayed compliance dates of any new rules to allow sufficient time for companies to prepare any new mandated climate-related disclosure for the first time. We note that the Commission first proposed an overhaul of the disclosure requirements for mining companies and solicited comments on its proposed rules in 2016. The final mining disclosure rules adopted by the Commission in 2018 provided a two-year phase in period to provide ample time for issuers to prepare to comply with the updated mining disclosure requirements, and we believe a similar phase-in period would be appropriate here.

**4. Companies should not be subject to undue liability exposure given the inherently uncertain nature of climate-related data, metrics and other information, and forward-looking scenario analysis.**

Many types of climate data and information that investors may seek from issuers are subject to a heightened degree of uncertainty as compared to most of the financial and operational data disclosed in periodic reports.<sup>6</sup> In particular, disclosures made in line with the scenario analysis recommendations of TCFD are subject to heightened uncertainties due to the ways in which forward-looking scenario analyses are constructed and the very long time frames over which potential climate risks are assessed.<sup>7</sup> Accordingly, we believe the best way to

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<sup>6</sup> For example, a recent article in *Nature Climate Change* concludes that “Calls for the integration of climate science into risk disclosure and decision-making across many levels of economic activity has leap-frogged the current capabilities of climate science and climate models by at least a decade.” Tanya Fiedler et al., *Business Risk and the Emergence of Climate Analytics* 11 *NATURE CLIMATE CHANGE* 87, 91 (2021).

<sup>7</sup> The TCFD itself has recognized that while the technique of scenario analysis is a well-established tool, “climate-related scenarios do not always provide the ideal level of transparency, range of data outputs, and functionality of tools that would facilitate their use in a business or investment context.” Recommendations of the Task Force on Climate-Related Financial Disclosures at 30 (2017).

balance investor demand for this information against its inherent uncertainties is for the Commission to provide a liability safe harbor for newly mandated metrics and data and forward-looking information provided in response to any new climate-related disclosure requirements. A safe harbor rule would promote meaningful climate-related disclosure while minimizing, but not eliminating, liability risks resulting from such disclosures. Further, to the extent the Commission proposes the disclosure of information that is inherently uncertain, such as projections of future climate impacts, market impacts and associated financial risks, the Commission should also provide specific guidance to issuers regarding how to communicate these uncertainties.

Moreover, disclosing climate-related and other non-financial information outside of SEC filings has become an acceptable market practice from both the investor and issuer perspective. Many companies, including Freeport, voluntarily publish stand-alone climate and sustainability reports, and make such information available on their websites. These reports are used to communicate with a variety of stakeholders (not just investors). If the Commission were to adopt a rule mandating disclosure of climate-related information, the Commission should allow such information to be “furnished” rather than “filed” for purposes of the Securities Exchange Act of 1934. Companies that voluntarily disclose climate-related and other non-financial information outside of SEC filings should already do so in compliance with the existing obligation not to make materially misleading statements.<sup>8</sup>

**5. While the Commission should retain direct authority to regulate climate-related disclosures, it should consider allowing companies to satisfy the new requirements by complying with existing standards.**

In order to ensure that the disclosure of climate-related information remains focused on material issues, the Commission should retain the authority to regulate climate-related disclosures. The Commission itself is the only body that is appropriately situated to evaluate the appropriateness of disclosures in this light, and therefore should retain its direct authority to regulate climate-related disclosures and should not delegate development of those requirements to unregulated third parties. However, Freeport, like many companies, has invested significant time and expense in developing disclosures that are responsive to one or more existing voluntary frameworks, including those developed by GRI, SASB and TCFD. Thus, the Commission may want to consider allowing companies to satisfy any new climate-related disclosure requirements through disclosures that comply with the guidance of specified standard setters. This approach would allow companies to leverage the work done to date and provide continuity and comparability in the disclosures provided. It also would leverage the expertise of those dedicated to preparing private sector standards. This approach, however, should not be viewed as an alternative to notice and comment rulemaking and oversight by the Commission of climate-related disclosure requirements. Instead, it could be proposed as an alternative way for companies to satisfy Commission requirements that are adopted through notice and comment rulemaking.

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<sup>8</sup> See 17 CFR §240.10b-5

Thank you for the opportunity to provide these comments. We look forward to a continuing dialogue as the Commission moves forward with its rulemaking process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Douglas N. Currault II". The signature is fluid and cursive, with a large initial "D" and a stylized "C" at the end.

Douglas N. Currault II