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June 12, 2021

Mr. Gary Gensler, Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Request for Public Input Regarding Climate Change Disclosures

Dear Chairman Gensler:

The Williams Companies, Inc. ("Williams"), a Fortune 500 energy infrastructure company engaged in the gathering, processing and transportation of natural gas products, is pleased to offer the following response to the Securities and Exchange Commission's (the "SEC") March 15, 2021, request for public input concerning its consideration of disclosure requirements relating to climate change (the "RFI"). The RFI contains a list of general and more specific questions focusing on considerations that the SEC should assess as it considers the potential regulation of informational disclosure relating to climate change, and more broadly to issuers' environmental, social, and corporate governance ("ESG") practices.

Rather than responding to each RFI question individually, we discuss certain key concepts which the SEC should consider as it evaluates possible disclosure rulemaking for climate change and ESG-related matters. We also address additional concepts including the need for adherence to the existing materiality standard and the benefit of regulating only within a principles-based disclosure framework, encouraging issuer-level determination of materiality, requiring climate change and ESG-related information (collectively "Climate/ESG Information") to be "furnished" rather than "filed," and avoiding burdensome and duplicative reporting.

To the Extent the SEC Chooses to Engage in Climate/ESG Information Disclosure Rulemaking, the SEC Should Retain Its Existing Principles-Based Disclosure Framework Rather than Promulgating Specific, Detailed Disclosure Requirements.

We note that the SEC has not yet clearly defined the specific types of Climate/ESG Information of which it may wish to compel disclosure. We appreciate why as the terms "climate change" and "ESG", while amorphous, are very broadly used terms each with different meanings for different constituencies. Indeed, specific ESG metrics, such as water usage, which may be entirely relevant to an energy company engaged in exploration and production through the use of horizontal drilling, may be almost irrelevant to an energy company, such as Williams, that transports natural gas or other hydrocarbon products through a pipeline to customers. Due to the nature of their specific industries and businesses, issuers do not have the same climate, environmental, or other ESG concerns.

We also note that Climate/ESG Information is generally non-financial in nature and drawing a correlation between these types of information and the financial performance of a publicly traded company is highly subjective and remains in question.[1] Even requiring disclosure only of "quantifiable" data such as greenhouse gas ("GHG") emissions gives rise to numerous concerns relating to data aggregation, integrity, and reliability. For example, GHG emissions are often estimated based upon the application of emissions factors and mathematical formulas, modeling, and measurements, the result of which is then converted into a carbon dioxide equivalent (CO2e). Lack of standardization regarding assumptions, formulas, and factors to be applied in calculating emissions even within a given industry, and certainly across all industries, is likely to result in increased investor confusion and worsen the current challenge of investors making an "apples to apples" comparison of one company's disclosed data against another's. For these reasons, a principle-based disclosure framework which, over time, might be adapted to address the industry-specific requirements of issuers remains the most practical and readily implementable reporting solution.

Issuers are the Parties Best Situated to Assess What Metrics are Material and Relevant.

In a recent public statement, the SEC correctly acknowledged that participants within a given industry may be best positioned to define the materiality standard for required disclosures.[2] To reiterate, should the SEC compel disclosure of Climate/ESG Information, we strongly support application of a principles-based disclosure framework. However, should the SEC require specific metric disclosure, the SEC should designate individual industry issuers as the parties responsible for determining the Climate/ESG Information metrics applicable to their financial performance and allow them to set any specific thresholds for materiality, results above which would require disclosure. At a minimum, if the SEC chooses to impose reporting requirements for Climate/ESG Information metrics, it should first study and publicly justify why it believes such metrics are material to financial performance.

For instance, the atypical business model of the oil and gas industry combined with industry-specific terminology creates little cross-over with other industries and would make a departure from the established materiality standard difficult to apply, potentially resulting in either a failure to require disclosure of the information most relevant to an industry investor or necessitating an overly broad disclosure. Considering the inherent complexity of the oil and gas sector, and the deliberate way financial disclosures for the sector have been developed, requiring a third party or

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1 We are aware of studies purporting to show that strong ESG performance leads to financial outperformance. We are also aware of studies which challenge this assertion. We will continue operating our business in a safe and sustainable manner for the betterment of our investors, employees, and communities.

2 See Acting Chair Allison Herren Lee, Public Statement – Public Input Welcome on Climate Change Disclosures – Question 3 (2021), available at https://www.sec.gov/news/public-statement/lee-climate-change-disclosures.

the government to rapidly develop and apply a set of new materiality standards and reportable metrics applicable to all industries would be tremendously difficult and complex.

Because of the proximate impact that changing facts and circumstances have on a company's performance and the fact that public companies are regularly receiving investor and other market participant feedback, an individual issuer is clearly the party best situated to determine, within the confines of a principle-based disclosure framework, whether a given piece of Climate/ESG Information would be material to its financial performance and thereby material to an investor in making an investment decision.

As an example, we regularly engage with our investors and they frequently share their concerns and request information. As a part of this dialogue, we make publicly available an annual sustainability report containing detailed ESG information. Investors have been appreciative of this information, but the more significant issue for investors is data comparability among issuers. To address that concern, Williams, as a member of the Energy Infrastructure Council ("EIC"), a non-profit trade association dedicated to advancing the interests of companies that develop and operate energy infrastructure and which is comprised of traditional and renewable energy infrastructure companies, is leading a midstream energy sector effort to identify and promulgate industry-wide accepted metrics. On December 2, 2020, the EIC ESG Working Group, which was co-chaired by our CEO, Alan S. Armstrong, and in collaboration with GPA Midstream, released the Midstream ESG Reporting Template (the "Reporting Template") which provides the relevant ESG metrics sought by midstream investors. The Reporting Template, which provides metrics that are relevant, transparent, meaningful, and, critically, comparable is the product of an extensive review of best-practice ESG reporting among EIC member companies and the investment community. This midstream energy industry-led initiative is the ideal example of how companies operating within an industry, rather than a third party, can set meaningful ESG metrics which are, from an investors perspective, practical, useful, and comparable. A link to the Reporting Template is available on this page ESG/SUSTAINABILITY - Energy Infrastructure Council (eic.energy).

The SEC Should Adhere to the Existing "Materiality" Standard.

We note that materiality does not exist in a vacuum. Materiality is a malleable standard when considered in light of the unique circumstances of a given issuer. Should the SEC choose to require issuer disclosure of Climate/ESG Information, application of the longstanding benchmark materiality standard to any disclosure requirement is imperative. Materiality is a well-tested concept that underpins United States' securities law and defines the outer boundary of required financial disclosures and business risks.[3] Indeed, the existing U.S. materiality concept, derived from the reasonable investor standard has served our capital markets well for decades and is predicated on the fact that materiality is inherently adaptable and readily applicable to evolving

[3] TSC Industries v. Northway, Inc., 426 U.S. 438, 449 (1976). See also Basic, Inc. v. Levinson, 485 U.S. 224 (1988). The term "material" was introduced in the U.S. Securities Act of 1933 (the "Securities Act") and the U.S. Supreme Court has established that information is material for purposes of the securities laws if there is "a substantial likelihood that the . . . fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."

facts and circumstances.[4] Accordingly, we believe that the existing regulatory concept of materiality should not be altered or modified in any way.

The SEC Must Not Engage in "All Things to All People" Regulatory Overreach.

The Supreme Court has been "careful not to set too low a standard of materiality," for fear that management would "bury the shareholders in an avalanche of trivial information."[5] Corporate issuers consider whether the "reasonable investor would have considered [the facts] significant in making investment decisions."[6] This consideration does not create a duty to disclose information "merely because a reasonable investor would very much like to know that fact."[7] Rather, material facts generally relate to discernable economic or financial impact on a company's earnings or operations.

Requiring disclosure of Climate/ESG Information that does not meet the established materiality standard is likely to result in the very "avalanche" of information sought to be avoided. Before mandating any further disclosure of specific Climate/ESG Information, the SEC must consider whether disclosure of climate change and ESG-related information is truly material to the issuer's financial performance, rather than of general societal interest. While we recognize that the SEC has sometimes imposed a duty to disclose information which is less than material, "interesting" or "important" is not the appropriate standard and would result in a massive expansion of the required disclosure of Climate/ESG Information. If Climate/ESG Information is immaterial to an issuer's financial performance, a duty to disclose should not be imposed by new regulation. The volume of Climate/ESG Information potentially subject to disclosure, coupled with the inherent uncertainty of that information, the lack of consistency between companies' approaches to calculating GHG emissions or other data, and the lack of transparency relating to the underlying assumptions associated with those calculations, cast serious doubt on the benefit of such information to investors.

Additionally, disclosure requirements that depart from the well-established materiality standard could run afoul of recent First Amendment precedent applying strict scrutiny to content-based laws compelling speech.[8] Although requiring limited disclosure of accurate and material information impacting the financial position of a corporate issuer meets the strict scrutiny standard applied by the Supreme Court,[9] requiring the disclosure of information that is not material to financial performance, that may not be accurate, and that may be subject to honest debate or which may be highly controversial, likely does not satisfy this standard,[10] and may not even satisfy the less

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4 See [Corporate Governance Update: "Materiality" in America and Abroad (harvard.edu).]()
5 Matrixx Initiatives, Inc. v. Siracusano, 563 U.S. 27, 38 (2011) (cleaned up).
6 Ganino v. Citizens Utilities Co., 228 F.3d 154, 161 (2d Cir. 2000).
7 Meyer v. Jinkosolar Holdings Co., 761 F.3d 245, 250 (2d Cir. 2014).
8 NIFLA v. Becerra, 138 S. Ct. 2361, 2365-66 (2018).
9 Barr v. American Ass'n of Political Consultants, Inc., 140 S. Ct. 2335, 2346 (2020); Reed v. Town of Gilbert, 576 U.S. 155, 159 (2015).
10 Id.

restrictive application of intermediate scrutiny[11] under which the law compelling speech must be "narrowly tailored to serve a significant governmental interest."[12]

Thus, the SEC should carefully consider the volume and accuracy of information that may be subject to any newly promulgated disclosure requirement as well as the substantial constitutional concerns associated with mandating disclosure of information not financially material to an issuer.

Liability Associated with Disclosure of Climate/ESG Information Should be Limited by Considering such Information to be "Furnished" rather than "Filed."

Any required disclosure of Climate/ESG Information should be considered "furnished" rather than "filed."[13] While climate and other ESG-related disclosures may provide valuable and useful information to investors, this information is inherently different than the traditional financial information disclosed in quarterly and annual reports filed with the SEC. As previously noted, by its nature, most Climate/ESG Information is qualitative, and even quantitative information relating to specific GHG emissions is calculated based upon the application of assumptions and estimated engineering factors relative to specific types of emissions sources and control equipment, all of which depends upon the specific parameters and conditions under which that equipment is operated. Simply put, the calculation and presentation of Climate/ESG Information is inherently different from the relatively objective and mathematical process of disclosing financial information via financial statements.

By considering any required disclosure of Climate/ESG Information to be "furnished" rather than "filed," the SEC would encourage broader, more useful, disclosure. Should such disclosures be considered "filed," issuers would be potentially subject to liability under Section 18 of the Securities Act. Additionally, if such disclosures were considered "filed" they would be considered incorporated by reference into a filing under the Securities Act and would potentially subject the issuer to the strict liability provisions of Section 11 of the Securities Act. The likely outcome of exposure to such potential liability is that an issuer would either (i) disclose information in a very limited manner designed to narrowly meet the specific disclosure requirement and, in order to avoid subjecting itself to further liability, such issuer may avoid voluntarily providing additional information or offering context or explanation that may be valuable to investors, or, (ii) perhaps worse, make overly broad, generalized disclosures as a means of ensuring compliance but which would flood investors with immaterial and less decision-useful information.

Considering Climate/ESG Information to be "furnished" would encourage issuers to readily determine what information is truly material, expand their disclosures beyond the bare minimum regulatory requirements, and provide additional perspective or context surrounding the information disclosed and its relevance to their operations and financial position. Such "furnished"

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[11] National Ass'n of Mfrs., 748 F.3d 359, 371-72 (D.C. Cir. 2014) (invalidating SEC's conflict minerals rule under the intermediate scrutiny standard)

[12] National Ass'n of Mfrs., 748 F.3d 359, 371-72 (D.C. Cir. 2014) (invalidating SEC's conflict minerals rule under the intermediate scrutiny standard)

[13] Id.

statements are still covered by existing anti-fraud provisions of federal securities laws and would ensure that the disclosed information is truthful.[14]

Finally, ensuring that statements made in Climate/ESG Information disclosures are afforded the same liability protection routinely applicable to forward-looking statements is essential. Attaching liability, particularly strict liability, to disclosure of information that by its very nature may be assumed, estimated, and uncertain is unjust to issuers. The provision of liability protection will encourage issuers to report forward-looking targets which they in good faith reasonably believe are obtainable. Further, due to the potentially immaterial and non-financial nature of much Climate/ESG Information, the SEC should consider the provision of safe harbors, particularly during the initial periods following the imposition of mandatory disclosure.

The SEC Should Focus on Domestic Concerns and Should Not Feel Constrained to Consider or Adopt International Standards in Respect of Climate/ESG Information Disclosures.

We agree with Commissioner Peirce's comments that:

> "A single set of metrics will constrain decision making and impede creative thinking. Unlike financial accounting, which lends itself to a common set of comparable metrics, ESG factors, which continue to evolve, are complex and not readily comparable across issuers and industries. The result of global reliance on a centrally determined set of metrics could undermine the very people-centered objectives of the ESG movement by displacing the insights of the people making and consuming products and services."[15]

As a U.S. governmental body charged with protecting domestic investors through the regulation of U.S. issuers and markets, the SEC should not adopt a global regulatory perspective. Instead, the SEC must remain focused on domestic facts, circumstances, and impacts, which may be very different than those of foreign countries. Our concern is particularly applicable in the environmental realm where countries are at wildly different stages of ESG action and in which foreign U.S. competitors could obtain a significant, global competitive advantage by being subjected to lower (or no) ESG reporting standards as compared to those ESG standards which the SEC might choose to impose on domestic issuers.

The SEC Should Avoid any Duplicative and Overly Burdensome Reporting Requirements.

The SEC must consider existing U.S. reporting regimes such that issuers are not required to produce duplicative information via different reporting methodologies. The SEC should consider how best to leverage existing U.S. Climate/ESG Information reporting frameworks, including the Environmental Protection Agency's GHG reporting regime, as well as existing voluntary reporting

[14] See 17 C.F.R. Section 240.10b-5(b).

[15] Statement by Commissioner Peirce on Rethinking Global ESG Metrics available at https://corpgov.law.harvard.edu/2021/04/16/statement-by-commissioner-peirce-on-rethinking-global-esg-metrics/#more-137599.

programs, such as the EIC/GPA Midstream Reporting Template, to avoid duplicative reporting requirements.

The SEC Must Weigh the Significant Imposed Costs and Timing Considerations Against the Utility of the Information to be Disclosed.

ESG reporting is a massive undertaking requiring significant resources in terms of both hours and dollars. For instance, Williams employs a full-time, management level director who spends approximately 25% of his time working on and coordinating the preparation of our Sustainability Report and related ESG initiatives. The process to gather data and prepare our Sustainability Report involves a cross-functional ESG Steering Committee comprised of cross-functional leaders and over 60 subject matter experts. We also use a third party consulting firm, which we annually pay in excess of a quarter of a million dollars, to assist us in our ESG and Sustainability Report process. In short, existing ESG and related reporting is time consuming and expensive and imposes substantial costs on public companies that most private companies do not incur. Making those disclosures a requirement of SEC reporting will materially increase these costs. The SEC should consider these financial repercussions when it studies ESG rulemaking. Williams is a Fortune 500 company with reliable operations and predictable cashflows. Most issuers do not have the financial resources to engage in the sort of ESG and Sustainability Report process to which Williams is committed.

Thus, the scope of any additional disclosure requirement should be narrowed to compel disclosure of only material, reliable, and objective information. Expanding the scope of mandatory disclosures to information that is more subjective in nature, such as strategy and governance matters associated with climate change and ESG-related disclosures, will be costly and will require issuers to make numerous undefined assumptions resulting in disclosures that are too speculative or subjective or which lack ready comparability to be useful to investors.

The SEC must also allow adequate time for issuers to develop internal processes and internal controls for complying with any disclosure requirement to ensure the accuracy and reliability of disclosed information. Imposing a disclosure obligation which is so burdensome that it reduces the ability of an issuer to fully meet the demands of the requirement while simultaneously operating its business will fail to achieve the overarching goal of providing timely and material information to investors.

Thus, a robust cost-benefit analysis must be undertaken prior to promulgation of any regulation requiring additional disclosure, and the benefit of such disclosure to investors must be carefully weighed against the financial and administrative burden of compliance. Consideration of the financial burden of compliance as well as the practical ramifications of the proposed requirements for all impacted issuers, but particularly for small and mid-sized companies, is necessary. The financial burden imposed upon all issuers should be considered, particularly in light of the subjective and non-financial nature of Climate/ESG Information and the questionable materiality of such information.

Any Rulemaking Must be Undertaken in Conformance with the Notice and Comment Rulemaking Process Afforded by the Administrative Procedure Act.

We also have concerns that the SEC, through administrative action, is pre-empting the type of larger legislative debate that should occur in Congress. Should the SEC proceed to regulate disclosure of Climate/ESG Information, the use of the notice and comment rulemaking process afforded by the Administrative Procedure Act ("APA") is the legally proper way to vet the numerous issues associated with such rule making. Should the SEC choose to develop an entirely new disclosure regime for Climate/ESG Information, it would find itself operating in a range of policymaking that significantly departs from its historical, and financial-oriented, perspective. Indeed, GHG emissions and many other potential ESG disclosures are outside the SEC's traditional financially grounded mission and financially oriented regulation.

Notice and comment rulemaking under the APA would serve the SEC's ultimate goal of assuring that companies' disclosures, whether relating to climate change or financial position, provide material information that would assist in the making of informed decisions by reasonable investors. Allowing time to develop the proper scope of the information to be disclosed, the method by which that information is disclosed, and which parties determine the standards for informational disclosure, among many other issues, should be done via the methodical and transparent policy making process afforded by the notice and comment rulemaking process.

Conclusion

Williams appreciates this opportunity to share its thoughts and information with the SEC as it considers whether to regulate disclosure of Climate/ESG Information.

Respectfully,

T. Lane Wilson
Sr. Vice President and General Counsel