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Moreover, we suggest that the Commission consider the potential risk of retroactive liability discussed further under Question 221, which could become a disincentive to registrants providing robust and meaningful disclosure.

Question 217: Would line-item requirements for disclosure about sustainability or public policy issues cause registrants to disclose information that is not material to investors? Would these disclosures obscure information that is important to an understanding of a registrant's business and financial condition? Why or why not?

Response: As stated in the General Comments above, it is our opinion that the vast majority of sustainability matters do not rise to the level of materiality (as that is currently defined). Should disclosure of sustainability issues be summarily required, non-material matters would almost certainly be included in the disclosure. At the same time, such disclosures would not typically obscure information concerning a registrant's business and financial condition *if the required disclosure is narrative only* – similar to the discussion of risk factors in a 10-K⁹ or the conflict minerals disclosure in Form SD¹⁰. A narrative, non-financial disclosure could provide additional business, product, operational or managerial context that some investors may find valuable in their investment decisions¹¹. But this context is unlikely to be financially material. Conversely, should *financial disclosure* be required for non-material sustainability issues, ELM believes that would create confusion and misinterpretation by investors, possibly obscuring other (material) financial information.

Question 218: Some registrants already provide information about ESG matters in sustainability or corporate social responsibility reports or on their websites. Corporate sustainability reports may also be available in databases aggregating such reports. Why do some registrants choose to provide sustainability information outside of their Commission filings?

Response: Registrants enjoy flexibility and reduced risk in report content/language that is provided outside of regulatory filings. Reporting outside of filings allows registrants more leeway in describing issues and results, a critical concern given that sustainability matters are highly diverse and many times intangible. This became evident with Form SD and the Conflict Minerals Report (CMR) disclosures required under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. As one of the leading advisory and auditing firms in the conflict minerals space, ELM works and talks with hundreds of registrants about their Form SD and CMR filings. The prevalent approach registrants have taken in the three years of conflict minerals reporting is to limit disclosure to what Form SD Instructions and the Final Release require¹².

⁹ Of course, should any risk factor discussed in the narrative also be material, the associated financials would be disclosed concurrently.

¹⁰ There are certain parallels between the Form SD disclosure requirements and potential sustainability disclosures. We discuss this in our response to Question 218.

¹¹ As previously mentioned, the extent to which sustainability information is currently weighted in investor decisionmaking is unclear, therefore the broad value of a narrative-only disclosure may be inherently questioned.

¹² There were exceptions to this approach. Registrants who chose to expand their conflict minerals disclosure did so due to reputational concerns, customer requirements, a desire to be overly inclusive in an abundance of caution in their filings and to address potential concerns about investor pressure. Interestingly, we are not aware of any

