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

Re: Request for Public Input on Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Chairman Gensler,

Air Products and Chemicals, Inc. ("Air Products") appreciates the opportunity to provide comments to the U.S. Securities and Exchange Commission (the "SEC") in response to the SEC's proposed Enhancement and Standardization of Climate-Related Disclosures for Investors (Release No. 33-11042; File No. S7-10-22) as released on March 21, 2022.

About Air Products
Air Products' higher purpose is to bring people together to collaborate and innovate solutions to the world's most significant energy and environmental sustainability challenges. Focused on serving energy, environment and emerging markets, we provide essential industrial gases, related equipment and applications expertise to customers in dozens of industries, including refining, chemicals, metals, electronics, manufacturing, and food and beverage. We are the world's largest supplier of hydrogen and the global leader in the supply of liquefied natural gas process technology and equipment. Air Products develops, engineers, builds, owns and operates some of the world's largest industrial gas projects, including gasification projects that sustainably convert abundant natural resources into syngas for the production of high-value power, fuels and chemicals; carbon capture projects; and world-scale low- and zero-carbon hydrogen projects supporting global transportation and the energy transition.

Air Products' growth and sustainability strategy are one and the same, and we are executing over $12 billion of fully approved projects that support cleaner energy and a cleaner environment. We share our sustainability progress annually via our Sustainability Report, which we have published for nearly three decades. We have reported on Scope 1 and Scope 2 greenhouse gas ("GHG") emissions since 2006, and on Scope 3 GHG emissions since 2010. Air Products also has obtained limited assurance of its emissions since 2010, including Scope 1, Scope 2 and a portion of our Scope 3 emissions. While our fiscal year runs from October 1 to September 30, our Sustainability Report is published annually in late spring and includes emissions data reported on a calendar year basis for the prior year.

Comments
Air Products supports transparent disclosure of sustainability-related information that enables our stakeholders to understand our goals, approach and progress and informs investors' investment decisions. Therefore, we support many facets of the proposed rules, particularly those aligned with the Task Force on Climate-Related Financial Disclosures ("TCFD"). Likewise, we support clear disclosure of organizational boundaries for reporting GHG emissions in line with the GHG Protocol.

However, we see challenges with several provisions of the proposed rules, particularly in three broad areas:

1. Timing of Reporting
   The proposed rules do not consider companies having fiscal years that are different from the calendar year and do not provide sufficient time for effective preparation, review and verification of GHG emissions data.
2. Emissions Reporting and Related Disclosures
   Relevance, materiality thresholds and estimation methods for Scope 3 emissions vary widely and should not be dictated by the rules, nor should the rules mandate specific disclosure of production data, climate-related targets, climate scenarios or transition plans that may divulge competitive information or significantly increase reporting burdens.
3. Financial Metrics
   The rules should encourage climate-related disclosures based on use of the principles-based materiality standards that are currently applied to financial and non-financial disclosures in SEC filings, rather than applying new prescriptive disclosure thresholds.

1. Timing of Reporting

The proposed rules create complications for companies with fiscal years that are different than the calendar year. As proposed, the mandated requirements involve reporting of GHG emissions information in a company's Annual Report on Form 10-K. Air Products' fiscal year is a 12-month period beginning October 1 and ending September 30 of the following calendar year, which is the same as the federal government's fiscal year. As a large accelerated filer, Air Products' filing deadline is 60 days after its fiscal year end, or November 29.

Regulatory reporting of environmental data in the United States is conducted on a calendar year basis. For example, the U.S. EPA's Greenhouse Gas Reporting Program ("GHGRP"), which covers approximately 7,600 U.S. facilities representing about 50 percent of total U.S. GHG emissions, requires submission of GHG data after the completion of a calendar year.[1] Over 20 of Air Products' U.S. facilities are subject to reporting under the GHGRP and this data is included in the aggregate emissions information that we disclose in our annual Sustainability Report. As a result of the timing mismatch between calendar and fiscal years, the proposed rules would require Air Products and a significant number of similarly situated companies to report emissions data under two different federal rules and timeframes, which

[1]U.S. EPA, Greenhouse Gas Reporting Program (GHGRP) | US EPA, available at https://www.epa.gov/ghgreporting.

would significantly increase our reporting burden and potentially require data reconciliation that may reduce the value of the earlier disclosures to investors.

Furthermore, the rules as proposed provide insufficient time to effectively prepare, review and verify GHG emissions data for incorporation into our Form 10-K filed each November. The GHGRP allows data to be submitted up to 90 days after the end of the calendar year. Air Products incorporates the GHGRP data into its annual GHG inventory, which is subsequently assured by a third-party. As a result, Air Products' process to collect and validate data, estimate and review emissions and obtain third-party limited assurance for GHG-related data in our Sustainability Report requires approximately 150 days after the end of the calendar year. The time required for our reporting is consistent with the information provided by the large-cap, industrial manufacturer cited in the case study *The Cost of Climate Disclosure*, which noted that voluntary climate disclosures were prepared by a report team consisting of a full-time consultant and 20 employees working part-time each year from November until March.[2]

The mismatch in calendar and fiscal years, as well as the timing required to accurately report and verify GHG data, could be addressed by enabling registrants to provide GHG information in a report separate from their Annual Report on Form 10-K, with sufficient time allowed for data collection, preparation, review and verification. This could be done while still providing the benefits that the SEC has identified as its objective for requiring disclosure of this information, namely that it may make it easier for investors to locate and compare climate-related information and to use such information to make investment decisions. In addition to improving the quality of the disclosure, adopting a uniform reporting period and reporting deadline will avoid interfering with companies' preparation of their annual reports and will facilitate collection of information from customers and suppliers that is necessary to effectively report emissions data, particularly, Scope 3 emissions.[3]

2. Emissions Reporting and Related Disclosures

Nearly all GHG emissions are estimated rather than measured. The estimation of Scope 3 emissions is even more uncertain than Scope 1 and Scope 2, since companies do not have direct control of Scope 3 emissions sources and rely on less established methodologies, emissions factors and data sources.

In addition, the Scope 3 categories vary widely in applicability and importance between companies and industry sectors. For example, manufacturers of basic materials could have much higher Scope 1 and 2 emissions compared to Scope 3, while companies producing consumer goods could have higher Scope 3 emissions due to the use of their products. As a result, flexibility is needed for companies to determine which Scope 3 categories are relevant, what materiality thresholds are appropriate and how these emissions should be

[2] L. Reiners and K. Torrent, *The Cost of Climate Disclosure: Three Case Studies on the Cost of Voluntary Climate-Related Disclosure*, Climate Risk Disclosure Lab (2021), available at https://climatedisclosurelab.duke.edu/wp-content/uploads/2021/12/The-Cost-of-Climate-Disclosure.pdf.

[3] Similar to the SEC's finding in its 2012 conflict minerals rulemaking, the impact of a reporting obligation tied to issuers' fiscal years would effectively impose a de facto continuous reporting obligation on members of the issuer's value chain. *See Conflict Minerals*, SEC Rel. No. 34-67716 (Aug. 22, 2012) at page 120, *available at* https://www.sec.gov/rules/final/2012/34-67716.pdf. Such a requirement would have an adverse impact on the collection and verification of accurate emissions data and would impose substantial burdens on respondents, many of which are not themselves directly subject to SEC regulation.

estimated. In addition, we concur that reporting of Scope 3 emissions should be covered under safe harbor provisions due to the uncertainties inherent in Scope 3 emissions reporting.

Many investors use intensity-based metrics to compare GHG emissions of companies, typically using publicly available revenue data as the normalizing factor. The proposed rules include provisions for companies to report their GHG emissions on an intensity basis, including production as a normalizing factor. As opposed to reported financial metrics, production data often is considered to be confidential business information and not publicly disclosed. For example, under GHGRP the annual production of hydrogen is considered confidential business information. In addition, types of products vary widely within and between companies and industry sectors. As a result, requiring the provision of production data could compel companies to disclose confidential business information that is not material to investors and that would not yield comparable results.

The SEC has asked if it should require disclosure of any other climate-related targets or goals established by registrants, for example, energy usage, water usage, conservation or ecosystem restoration or revenues from low-carbon products. As with Scope 3 emissions, companies would likely use different methodologies for reporting this data, which could reduce its comparability and value to investors. In addition, including this data in financial reporting would make it subject to attestation, creating additional burden for companies. Therefore, we do not support such requirements.

Similarly, if registrants have prepared climate scenarios or transition plans, the proposed rules would require disclosure of the scenarios, assumptions and projected financial impacts and transition plan descriptions including relevant targets and metrics. As previously noted, Air Products is investing significantly in projects that support cleaner energy and a cleaner environment. Mandatory disclosures of climate scenario and transition plan details could result in the release of competitively sensitive information. Such mandates also may disincentivize companies from using such plans since the requirements could result in greater disclosure obligations and associated disclosure risks. Therefore, the proposed rules should not mandate detailed disclosures of specific climate scenarios or transition plans but could mandate disclosure of how the board of directors generally approaches oversight of climate risks and transition plans.

3. <u>Financial Metrics</u>

The proposed rules require registrants to provide disaggregated information regarding the positive and negative impacts of severe weather events and transition activities on consolidated financial statements unless the absolute impact in aggregate is below a proposed materiality threshold of 1%. Further, the proposal requires presentation of climate-related financial metrics on a gross basis by each financial statement line item.

This disclosure may not clearly demonstrate whether the aggregate impact of events and activities is material to a registrant on a net basis (or at all). For example, contractual provisions in our on-site business (the portion of our business where we construct an on-site plant near the customer's facility for the long-term supply of industrial gases), which represents about half of our total consolidated sales, allow us to pass-through certain costs to our customers, resulting in a neutral impact on operating income.

Rather than applying a prescriptive materiality threshold and dictating presentation requirements, the final rules should encourage use of the existing principles-based guidance regarding materiality and application of existing, customary accounting and disclosure rules regarding capital expenditures, loss contingencies and asset impairments that may be attributable to climate and weather impacts or transition plans. We note that the SEC's 2010 Guidance Regarding Disclosure Related to Climate Change[4] references such principles regarding how companies should discuss climate-related disclosures and that the SEC has continued to affirm the applicability of that guidance, such as in the Division of Corporate Finance's Sample Letter to Companies Regarding Climate Change Disclosures issued in September 2021.[5] We encourage the SEC to refrain from deviating from these prior statements and, as such, to continue using a principles-based approach to materiality determinations instead of a prescribed, and ultimately arbitrary, threshold. Principles-based evaluation enables each company to determine what is a severe weather event and a transition activity based on relevance and impact with the ability to disclose those that are material individually or in aggregate. In any event, we recommend that the proposed compliance date for this portion of the rulemaking be extended by at least one year given the need for retroactive application. We believe that this approach would result in the most meaningful disclosure for investors.

Air Products thanks the SEC for the opportunity to submit comments for its consideration on these important proposed rules.

Sincerely,

Simon Moore
Vice President, Investor Relations,
Corporate Relations and Sustainability

[4]Commission Guidance Regarding Disclosure Related to Climate Change, Release No. 33-9106 (Feb. 2, 2010) [75 FR 6290 (Feb. 8, 2010)], available at https://www.sec.gov/rules/interp/2010/33-9106.pdf.
[5]SEC Division of Corporation Finance, Climate Change Disclosure-Sample Letter, available at https://www.sec.gov/corpfin/sample-letter-climate-change-disclosures.