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Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, Northeast
Washington, D.C. 20549-1090

Subject: File Number S7-06-16

Dear Secretary Fields:

The American Fuel & Petrochemical Manufacturers ("AFPM") appreciates the opportunity to submit comments on the U.S. Securities and Exchange Commission's ("SEC" or "Commission") Concept Release on Business and Financial Disclosure Required by Regulation S-K ("Release").[1] The Release seeks public comment on updates to the existing disclosure requirements under Regulation S-K, and explores whether regulatory action is warranted to achieve the objectives of the Securities Act of 1933 ("'33 Act")[2] and the Securities Exchange Act of 1934 ("'34 Act").[3] AFPM's comments on the Release focus on the Commission's consideration of whether to mandate requirements specifically for environmental, social and governance ("ESG") disclosure, particularly in relation to climate change.

I. AFPM'S INTEREST IN THE RELEASE

AFPM is a national trade association with approximately 400 members. Our members represent over 97 percent of the nation's refining capacity and nearly all of its petrochemical manufacturing facilities. AFPM members play a critical role in supporting local communities and their economies, providing over three million jobs across the country. Our members' products also play a fundamental role in Americans' everyday lives.

AFPM supports transparent and timely disclosure of information that is necessary for shareholders to make sound investment and voting decisions in light of the financial performance and prospects of companies. AFPM member companies are publicly traded and therefore

[1] Docket No. 2016-09056, 81 Fed. Reg. 23,916 (Apr. 22, 2016).
[2] *See* https://www.sec.gov/about/laws/sa33.pdf.
[3] *See* https://www.sec.gov/about/laws/sea34.pdf.

prepare regular filings as specified in Regulation S-K concerning relevant and material aspects of the company's financial performance and prospects, including ESG issues when warranted. Many of our members also discuss ESG issues in voluntary forums, such as company web pages or sustainability reports of various kinds. Such supplemental discussion beyond the bounds of mandated disclosure enriches the public discussion of ESG issues, but may not be material and should not be conflated with disclosures made pursuant to Regulation S-K according to the longstanding principles of financial relevance and materiality upon which the securities markets rely.

As the Commission explores fundamental changes to the regulatory disclosure framework without additional legislation and authority from Congress, AFPM urges the Commission to hew closely to the original and abiding purposes of the '33 and '34 Acts to ensure the reliability and efficiency of the securities markets.

II. CONCEPT RELEASE

The Release touches on the origins of the federal disclosure regime and reviews the evolution of Regulation S-K as part of an integrated approach to disclosure under the '33 and '34 Acts. It also reviews earlier assessments of the disclosure regime and the policy principles that emerged from them to guide the further development and application of Regulation S-K.[4]

The Release explores whether Regulation S-K remains a sound structure for ensuring adequate business and financial disclosures to investors by asking whether parts of the regulation have become outdated or unnecessary, and whether additional disclosures are needed to support the integrity of securities markets, build investor confidence in these markets, and support capital formation. In the Release, the Commission recognizes the importance of focusing disclosure obligations on what is material to understanding the financial condition and prospects of a traded company and affirms the Commission's view that it "must consider whether the [contemplated regulatory] action will promote efficiency, competition, and capital formation."[5]

Against this backdrop, the Release asks, among other things, whether Regulation S-K should be amended by a new rulemaking that requires disclosure of more social and sustainability matters, including climate change. In considering this question, the Commission reiterated its previous determination that "disclosure relating to environmental and other matters of social concern should not be required of all registrants unless appropriate to further a specific

[4] For example, the Release discusses outcomes of the Commission's 1995 Task Force on Disclosure Simplification and the 2007 Advisory Committee on Improvements to Financial Reporting.
[5] Concept Release at 8.

congressional mandate or unless, under the particular facts and circumstances, such matters are material."[6]

It is important for the Commission to maintain the integrity of its disclosure requirements to foster efficient and productive capital markets. AFPM is concerned that mandating new kinds of disclosure beyond traditional principles of materiality and relevance could undermine proper market function and reduce the value of both traditionally mandated disclosure and voluntary discussion of ESG issues of wider interest to the public, as discussed below.

III. SUMMARY OF COMMENTS

The purpose of the SEC is to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation. In this regard, the '33 and '34 Acts designed a market for securities in which investors could gain insight into a company's financial performance and business operations through corporate disclosure. Materiality is a cornerstone of the disclosure system established in Regulation S-K under the '33 and '34 Acts. Materiality is to be understood in relation to the reasonable investor's financial interests, which are readily distinguishable from other, nonfinancial interests that investors may have, such as the promotion of policy goals.

Regulation S-K applies to environmental and social issues that bear on the company's financial condition and business prospects. In its 2010 Climate Change Guidance, the Commission points to the key disclosure requirements that apply to all subject matter in Regulation S-K: Items 101, 103, 303 and 503(c). Materiality surrounding environmental issues, including climate change, is adequately addressed by these four Items. Requiring a company to disclose social and environmental matters that are not material or sufficiently certain would effectively force the company to support social and environmental policy agendas that lie outside the SEC's authority and that disregard the company's purpose and strategy as a business.

Furthermore, expanding beyond the existing materiality rubric means mandating disclosure of immaterial, speculative matters, effectively undermining key principles of the '33 and '34 Acts and diminishing the reliability of financial markets. Existing mandatory disclosure requirements are adequate for addressing the issues that are fundamental for financial investors and securities markets. On the foundation of these disclosure requirements, the United States has built one of the most admired securities markets in the world. Social policy issues such as climate change are properly addressed under the materiality rubric of the existing disclosure framework. Companies remain free to engage in open and varied public discourse on these subjects in other contexts and venues. Deviating from the traditional approach to materiality as set forth in the '33 and '34 Acts by mandating the disclosure of immaterial and nonfinancial ESG issues would risk the politicization of securities laws in a manner that would be harmful to

[6] Concept Release at 205.

investors and detract from the SEC's core mission of protecting investors and the integrity of the financial market.

IV. ORIENTING PRINCIPLES

The Commission's consideration of special ESG disclosure mandates should be guided strongly by the key policy and legal principles of the '33 and '34 Acts. These principles have framed disclosure requirements and practices for decades, protecting investors and facilitating capital formation.

A. Congress Designed the '33 and '34 Acts to Protect Financial Interests, Not to Promote Social Policy Goals

Congress enacted the '33 and '34 Acts to respond to the tremendous loss of corporate and investor financial value following the 1929 stock market crash. Congress recognized that a well-functioning capital market requires accurate, timely information concerning what is significant to the financial interests of investors and the financial condition and prospects of companies. Thus, the intent of the '33 and '34 Acts was to restore the public's confidence in capital markets, enable investors to pursue and protect their financial interests, and "insure the maintenance of fair and honest markets"[7] through the protection of investors and prevention of fraud, deceit, and manipulation.[8]

To these ends, the '33 and '34 Acts designed a market for securities in which investors could gain insight into a company's financial performance and business operations, thereby enabling investors to pursue their financial interests with confidence. This system emphasizes the investor's financial interests, as well as the company's financial condition and outlook. As the Commission has recognized, the disclosure requirements of the '33 Act "are largely financial in nature and were intended to help investors assess a security's value," and the '34 Act "requires similar business and financial information to be disclosed."[9] The '33 and '34 Acts have facilitated capital formation and allowed a fair and efficient market to flourish.

In the Release, the Commission acknowledges these fundamental principles of the '33 and '34 Acts by stating that the Commission's "disclosure rules are intended not only to protect investors but also to facilitate capital formation and maintain fair, orderly and efficient capital markets."[10] Further, the Commission notes that effective disclosure will "…lead to more accurate share prices, discourage fraud, heighten monitoring of the managers of companies, and

[7] *See* https://www.sec.gov/about/laws/sea34.pdf, Section 2, page 3.
[8] *See* https://www.sec.gov/about/laws/sa33.pdf, Section 2(a)(10) and Section 8(a)(g)(2)(B)(1).
[9] Concept Release at 22-23.
[10] Concept Release at 23.

increase liquidity. Effective disclosure requirements also should increase the integrity of securities markets, build investor confidence, and support the provision of capital to the market."[11]

The financial interests protected by the '33 and '34 Acts are readily distinguished from other, nonfinancial interests that investors may have, such as the promotion of a wide array of policy goals that one or another investor may favor. Incorporating such agendas into the SEC disclosure framework would risk politicizing securities laws in a way that would detract from the core financial principles of the legal regime governing the securities market. AFPM believes the Commission should not modify the existing corporate disclosure system in any manner that strays from the foundation principles of the '33 and '34 Acts. AFPM highlights some of these key principles below.

B. Materiality Is Understood in Relation to Financial Interests

Materiality is a cornerstone of the disclosure system established in Regulation S-K under the '33 and '34 Acts. The SEC relies on the definition of materiality set forth by the U.S. Supreme Court, which stated that information is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision.[12] Further, the Commission defines information as material if there is a substantial likelihood that disclosure of the omitted fact would have been viewed by a reasonable investor as having significantly altered the total mix of information available. Corporate management is generally charged with the difficult task of discerning what is material to the company's financial condition and business prospects, and it must make this assessment through the eyes of a reasonable investor seeking to protect his or her financial interests.

Materiality is to be understood in relation to the reasonable investor's *financial* interests, as those are the interests of primary concern in the '33 and '34 Acts. Materiality is not limited to quantitative information; it also includes qualitative information, including known trends, demands and uncertainties that have a *material impact* on the financial results of a company. The Commission has repeatedly stressed the principle that materiality relates to financial interests. With respect to Management Discussion and Analysis ("MD&A") disclosure, for example, the Commission has admonished companies that they "should focus on material information and eliminate immaterial information that does not promote understanding of registrants' *financial condition, liquidity and capital resources, changes in financial condition and results of operations*."[13]

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[11] Concept Release at 14.

[12] *TSC Industries v. Northway, Inc.,* 426 U.S. 438 (1976).

[13] Commission Guidance Regarding Disclosure Related to Climate Change, 75 Fed. Reg. 6290, 6294 (Feb. 9, 2010) citing Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations, 68 Fed. Reg. 75056 (Dec. 29, 2003)(emph. added). *See also* Staff Accounting Bulletin No. 99, 64 Fed. Reg. 45150, 45151 (Aug. 19, 1999).

AFPM concurs with the Commission that the disclosure of immaterial information diminishes the value of material information by obscuring it and by implying that material and immaterial information should be given equal weight by the investor. This conviction is reflected in the Release: "[t]here is also a possibility that high levels of immaterial disclosure can obscure important information or reduce incentives for certain market participants to trade or create markets for securities."[14] The focus on materiality in the existing disclosure requirements should not be undermined by separately mandating special disclosure requirements for issues that are not of financial significance to the company.

C. Uncertainty Is Weighed in Relation to Materiality

Uncertainties that may exist with respect to social policy issues are not a reason to impose additional mandatory disclosure obligations. The existing disclosure rubric under Regulation S-K already addresses uncertainty and ties it to materiality. Total certainty is not a prerequisite for a disclosure obligation. Rather, management must weigh certainty alongside materiality, as reflected in a two-step rubric formulated by the Commission. First, management must evaluate whether the uncertainty is reasonably likely to occur. Unless management determines that it is not reasonably likely to occur, it must then determine whether the certainty, if it occurred, is reasonably likely to have a material effect on the company, its financial condition, or its results of operations. Unless management determines that a material effect is not reasonably likely, management must include the matter in its MD&A disclosure.[15]

This two-step process recognizes that degrees of uncertainty exist in evaluating both the likelihood and the significance of future events or circumstances. Moreover, it provides a definitive guideline for resolving disclosure obligations in the face of uncertainty. What is most important in the context of the Release is that the rubric is agnostic as to the nature of the uncertain matter, thereby ensuring that the same standard is applied to *all* kinds of issues that involve uncertainty. Doing so creates a level horizon against which investors can assess the importance of disparate issues relevant to a single company, as well as the importance of the same issue across multiple companies.

D. Disclosure Is Not Different for Environmental and Social Issues

Regulation S-K applies to environmental and social issues that bear on the company's financial condition and business prospects, just as it applies to other kinds of issues. The '33 and '34 Acts did not attempt to predict what issues may be or may become material to the financial interests of investors over time or that might become the focus of a broader social policy

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[14] Concept Release at 14.

[15] *See* Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 Fed. Reg. 22427, 22430 (May 24, 1989).

discussion. Rather, the ’33 and ’34 Acts and Regulation S-K set out principles of universal applicability and adaptability.

Climate change is not a unique case. In its 2010 Climate Change Guidance, the Commission points to the same key disclosure requirements that apply to all other subject matter in Regulation S-K: Items 101, 103, 303 and 503(c).[16]

a) Item 101(c)(1)(xii) specifically requires disclosure of the cost of complying with federal, state and local environmental laws.
b) Item 103 provides requirements that apply to the disclosure of certain environmental litigation.
c) Item 303 (MD&A) requires discussion of known trends, events, or uncertainties that may have a material effect on the company’s financial condition.
d) Item 503(c) requires risk factor disclosure, which should clearly state the risk and how this risk affects the registrant.

The Items above cover compliance, investment costs, trends, future contingencies and other forms of risk and expense, all of which are relevant regardless of the nature of the underlying issue. Materiality surrounding environmental issues, including climate change, is sufficiently addressed by these four Items. Chair Mary Schapiro specifically noted that the guidance did not expand the legal requirements concerning disclosure.[17] Nowhere in the Commission’s 2010 Climate Change Guidance did the Commission indicate that climate-related disclosure was insufficient or that the Items noted above were inadequate to protect investors. Similarly, the Release does not indicate that the Commission is unable to enforce its existing regulations to ensure that material ESG issues are disclosed. AFPM sees no reasoned basis upon which to conclude otherwise now.

E. The ’33 and ’34 Acts Do Not Change the Bylaws of a Company

Publicly traded companies seek capital from the marketplace to pursue particular business objectives using business strategies of their choosing. Transparency surrounding a company’s objectives and strategies allows companies to compete for the capital of investors. Investors are free to choose among companies based upon their affinity for the respective objectives and strategies of these companies. The disclosure laws prescribed by the ’33 and ’34 Acts facilitate these choices by requiring transparency surrounding a company’s financial footing.

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[16] *See* Commission Guidance Regarding Disclosure Related to Climate Change, 75 Fed. Reg. 6290, (Feb. 8, 2010).
[17] *See* remarks made by Chairman Schapiro on the Commission Guidance Regarding Disclosure Related to Climate Change, Jan. 27, 2010, available at https://www.sec.gov/news/press/2010/2010-15.htm.

The securities disclosure laws do not permit the SEC to alter a company's objectives and strategies, nor do they require a company to pursue different objectives or use different methods, provided they are lawful. By mandating immaterial or irrelevant disclosure to suit social policy goals (of whatever origin), the SEC would effectively co-opt companies into standard-bearers for causes unrelated to their charter.

Beginning in the late 1960s and early 1970s, shareholders began asking companies to disclose more ESG information. A coalition of nongovernmental organizations led by the Natural Resources Defense Council petitioned the SEC in 1971 to mandate broader environmental disclosure to serve the non-financial interests of investors. The SEC declined to adopt the petitioners' requests, and the SEC's position was upheld in court.[18]

Requiring companies to disclose social and environmental matters that are not material or sufficiently certain—i.e., beyond the existing disclosure rubric—would effectively enlist the companies in social and environmental programs without regard for the companies' business purposes and methods. Moreover, doing so would lack the appropriate legal mandate from Congress concerning such programs and would omit the due process that would attend even ordinary regulatory action by agencies with subject-matter expertise in social or environmental matters.

V. COMMENTS

AFPM provides the following comments on the Commission's contemplated departure from longstanding legal and policy principles to impose special requirements for ESG and climate disclosure.

A. Existing Mandatory Disclosure Requirements Are Adequate

Existing mandatory disclosure requirements align with the Commission's goals and have withstood decades during which many different issues of public interest and concern have come and gone. Further, they directly and reliably address the issues that are crucial for financial investors and securities markets: financial performance, materiality, trends, uncertainties and risks that could threaten the company's financial success.

The Commission's 2010 Climate Change Guidance rightly emphasizes the validity and utility of the existing materiality and certainty disclosure rubric for addressing issues related to climate change. It recognizes both the social significance of the climate change policy debate and the need for management to evaluate its bearing on the company's welfare. The existing

[18] *Nat'l Res. Def. Council, Inc. v. Sec. and Exch. Comm'n,* 606 F.2d 1031 (1979).

disclosure regime for identifying material issues with a likelihood of financial effect on a company is well-tested and well-suited to ESG issues, including climate change.

Social policy issues such as climate change can and, when material, should be disclosed according to the existing rubric of materiality and certainty. Items 101 and 103 provide a means for such disclosure in relation to compliance with local, state and federal environmental laws and disclosure of certain environmental litigation. Items 503 and 303 are particularly well-suited to address dynamic issues such as climate change through risk factor disclosure and MD&A. In this regard, Items 503 and 303 can serve as a means to address many other issues that may become important to investors over time as well.

The Commission has not put forth any evidence that climate change disclosure is inadequate to protect financial interests and support reliable, efficient markets in securities. In fact, when the Commission released its Climate Change Disclosure Guidance in 2010, then-SEC Commissioner Katherine Casey argued that existing disclosure rules were adequate with respect to corporate reporting on environmental change and that while certain interest groups had advocated for such climate change disclosure guidance, the usefulness of the information to most investors from the guidance was questionable: "…our disclosure regime related to environmental issues including climate change is highly developed and robust, and registrants are well aware of, and have decades of experience with complying with, these disclosure requirements."[19] Former Commissioner Troy Paredes also questioned the necessity of the 2010 interpretive release as a means "to reiterate what Regulation S-K items 101, 103, 303, and 503(c) already provide," noting that the 2010 release failed "to recognize that the climate change debate remains unsettled" and is an area "far outside this agency's expertise."[20]

Thus, existing mandatory disclosure requirements are adequate in addressing the issues that are fundamental for financial investors and securities markets, and they have been so for decades, in part because they are agnostic as to the issue being analyzed. Departing from these traditional requirements to mandate the disclosure of immaterial, nonfinancial ESG issues would risk the politicization of securities laws, which would be detrimental to shareholders and represent a shift from the SEC's core mission. Accordingly, social policy issues including climate change can and should be addressed pursuant to the existing rubric for disclosure.

[19] Remarks by SEC Commissioner Kathleen L. Casey on Commission Guidance Regarding Disclosure Related to Climate Change, Jan. 27, 2010, available at http://www.sec.gov/news/speech/2010/spch012710klc-climate.htm.
[20] Remarks by SEC Commissioner Troy A. Paredes on Commission Guidance Regarding Disclosure Related to Climate Change, Jan. 27, 2010, available at https://www.sec.gov/news/speech/2010/spch012710tap-climate.htm.

B. Mandatory Disclosure for Climate Change Would Not Benefit the Market or Investors

Expanding beyond the existing disclosure regime means mandating the disclosure of immaterial, speculative matters, since relevant and material matters of reasonable certainty are already subject to disclosure. The touchstone for disclosure is materiality as seen by the company through the eyes of a reasonable investor seeking to protect his or her financial interests. Abandoning the longstanding definition of materiality to encompass social policy issues and interests regardless of financial significance would undermine the key principles of the '33 and '34 Acts, thereby diminishing the reliability of financial markets.

The "SEC strives to promote a securities market that is worthy of the public's trust and is characterized by transparent disclosure to investors of the risks of particular investments."[21] In the current economy, the Commission's primary responsibility should be to protect American investors and maintain fair and efficient markets.[22] Some stakeholders have expressed concern that policy-driven disclosure requirements represent a shift away from the SEC's mission to protect investors, maintain fair, orderly and efficient markets, and facilitate capital formation. Stakeholders have also expressed that such requirements could risk burdening both registrants and investors with costly disclosure that is not material to any investment or voting decision.[23]

These concerns would be significant enough in their own right, but they are magnified in this instance because climate change, sustainability and other social policy issues do not lie within the expertise of the Commission or its staff. The record does not support a reasoned conclusion that the securities market—which lies within the Commission's charge—is currently impaired or would substantially benefit from mandating ESG disclosure outside the existing framework in Regulation S-K. Likewise, neither the record nor legal precedent supports using the Commission's authority in the area of securities markets to impress companies into service on social policy initiatives that are not authorized by the '33 and '34 Acts and for which the Commission has long recognized it lacks expertise.

The SEC has considered and rejected mandatory disclosure of environmental and social issues, including climate change, and no departure from this precedent is warranted. In 2010, after climate change had become a topic of widespread public interest, the Commission reaffirmed the suitability of the existing disclosure regime to address climate change, even in light of heightened social interest in the issue.[24]

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[21] *See* U.S. Securities and Exchange Commission Strategic Plan Fiscal Years 2014-2018, https://www.sec.gov/about/sec-strategic-plan-2014-2018.pdf at 3.
[22] *See* SEC Strategic Plan, https://www.sec.gov/about/sec-strategic-plan-2014-2018.pdf at 3.
[23] *See* "Letter to SEC on the Disclosure Effectiveness Initiative," Corporate Governance Committee of the Business Roundtable (April 15, 2015), http://businessroundtable.org/resources/letter-sec-the-disclosure-effectiveness-initiative.
[24] *See* "Commission Guidance Regarding Disclosure Related to Climate Change" at 1.

This determination was consistent with the Commission's position going back decades. For example, in 1975, the Commission considered a variety of "environmental and social" disclosure matters, as well as its own authority and responsibility to require disclosure under the federal securities laws. Following extensive proceedings on these topics, the Commission concluded that it generally is not authorized to consider the promotion of goals unrelated to the objectives of the federal securities laws when promulgating disclosure requirements, although such considerations would be appropriate where Congress specifically mandated them. The Commission also noted that disclosure to serve the needs of limited segments of the investing public, even if otherwise desirable, may be inappropriate because the cost to registrants, which must ultimately be borne by their shareholders, would likely outweigh the resulting benefits to most investors.[25]

C. The Commission Should Not Pick Winners Among Numerous Organizations Competing in the Development of Voluntary Reporting Templates

Voluntary reporting frameworks abound. Each offers particular emphases and benefits, depending on the interests of the framework's developer, the company that adopts the framework and the public that reads the result.

The growing number and complexity of voluntary disclosure frameworks reflects the evolution of a *market* for such frameworks. Commonly used frameworks include the CDP (formerly known as the Carbon Disclosure Project), the Global Reporting Initiative (GRI) and the recently formed Sustainability and Accounting Standards Board (SASB). All of these frameworks are effectively competing to shape the public policy debate surrounding ESG issues. However, they do not arise from and are not compatible with the regulatory framework for protecting investors' financial interests. Instead, they serve a different interest, which is to advance a social policy discussion. Without detracting from the importance of such social interests, they are not tantamount to the financial interests that the '33 and '34 Acts serve to protect.

In this context the Commission has asked whether it should, effectively, anoint a particular one of these organizations as having the 'approved' template for ESG disclosure.[26] This would be highly imprudent, unnecessary and legally suspect. The Commission is not charged by Congress with approving nonprofit organizations interested in social policy issues, any more than it is authorized to endorse particular corporations trading on the exchanges. Moreover, none of these templates has been developed within a legal framework, pursuant to legal principles, or under the governance of the legal authorities actually charged with protecting the market. Finally, the nature of such templates is that they change frequently, much as any marketplace product changes to suit the evolving interests of the manufacturers and the

[25] *See* Concept Release at 187.
[26] *See* Concept Release at 214.

consuming public. The dynamic nature of these competing templates makes them wholly unsuited to serve as the decisive guiding instruction for a company's disclosure obligations.

D. Voluntary ESG Disclosure Supports Public Discourse That Would Be Undermined By Conscripting Companies Into Mandatory ESG Disclosure

The science, policy and law concerning climate change and other ESG issues are complex and are evolving significantly. These issues should be—and inevitably are—discussed in venues that are flexible and dynamic. All the forums for socio-political debate are open for this discussion. Companies interested in participating in the discussion can freely do so. One method many companies have chosen to address ESG issues is the preparation of sustainability reports or corporate webpages for the public's perusal. The style, content, and scope of these vary according to the purposes of the companies. Many use templates provided by ESG organizations; many do not.[27] This is normal, and it demonstrates that ESG issues do not require the SEC's mandate in order to be discussed in public by investors, companies, or the public at large.

The Commission should not underestimate the potential effect on voluntary ESG discussion if it were to mandate ESG disclosure beyond the principles of materiality and certainty. A regulatory prescription is necessarily static, which is well-suited to addressing financial issues but is wholly unsuited to addressing socio-political issues that constantly evolve as changing scientific information, social interests and political interests converge. Moreover, once an issue must be treated under Regulation S-K pursuant to a new, prescribed standard, companies will be constrained in their ability to continue to participate in voluntary discussions on the same topic. The risks arising from error and simple divergence between voluntary and mandated disclosures on the same topic are strong deterrents.

It would seem particularly perverse—and yet foreseeable—if the rich existing public discourse on ESG topics were curtailed by the Commission's prescription for mandatory disclosure on these topics for reasons other than protecting the financial interests of the investing public.

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[27] For example, the Governance & Accountability Institute and Bloomberg LP reported that the number of S&P 500 companies reporting on ESG issues in voluntary sustainability or ESG reports has grown more than 300 percent over the past five years. In 2011, less than 20 percent of S&P 500 companies reported on ESG issues. This number rose to 53 percent of companies in 2012, and to more than 80 percent in 2015. *See* http://www.ga-institute.com/nc/issue-master-system/news-details/article/flash-report-ga-institute-and-bloomberg-lp-partner-to-examine-bloomberg-esg-disclosure-scores-for.html?tx_ttnews[backPid]=1&cHash=2f980e46bf80840c394295de5ce8fa2f.

VI. CONCLUSION

AFPM supports the SEC's goal of maintaining fair, orderly and efficient markets through transparent and timely disclosure of material information. AFPM has significant concerns about the SEC mandating the disclosure of social policy issues such as climate change. AFPM urges the Commission to hew closely to the original and abiding purposes of the '33 and '34 Acts to ensure the reliability and efficiency of the securities markets. Social policy issues can and should be disclosed in the mandatory format according to the longstanding rubric of materiality and certainty. Beyond that, the widely varying non-financial interests of millions of investors are best served by a robust, flexible and dynamic public discourse in which companies participate to the extent their corporate objectives and strategies dictate.

AFPM thanks the SEC for the opportunity to comment on the Release. Please contact the undersigned if you wish to discuss these issues further.

Sincerely,

Brendan Williams
Executive Vice President
American Fuel & Petrochemical Manufacturers