



April 28, 2014

Filed via Email at nrr_comments@sasb.org

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RE: Non-Renewable Resources Sector; Coal Operations & Metals & Mining
Exposure Drafts for Public Comment (January 2014)

The National Mining Association (NMA) submits the following comments on the Sustainability Accounting Standards Board (SASB) Exposure Drafts on coal operations and metals and mining released on January 14, 2014. SASB shared the Exposure Drafts with NMA on February 12, 2014, and hosted a webinar for NMA members on the organization and development of the sustainability accounting metrics on March 4, 2014. NMA appreciates SASB's willingness to educate our staff and members on the mission and efforts undertaken by the organization in developing sustainability accounting standards for use by publicly-listed corporations in disclosing material sustainability issues. However, NMA strongly opposes SASB's work to date and will not support in any manner SASB's ongoing efforts to develop disclosure guidance or accounting standards on sustainability topics for coal operations and the metals and mining industry in the "non-renewable resources sector."

Statement of Interest

NMA is a national trade association whose members include the producers of most of the nation's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms serving the mining industry. NMA members produce energy, metals and minerals that are essential to economic prosperity and a better quality of life. NMA members are committed to development that balances social, economic and environmental considerations.¹ NMA and our members

¹ See NMA Position on Sustainable Development at <http://nma.org/index.php/position-on-sustainable-development> (last visited April 8, 2014).

are also committed to the safety of employees through the **CORESafety®** program.² As stated above, NMA and its members do not support SASB's efforts to date in determining and dictating which sustainability issues are material industry-wide and consequently should be disclosed (voluntarily or through a formal rulemaking process) in annual (i.e., Form 10-K or 20-F) or periodic filings to the U.S. Securities and Exchange Commission (SEC).³

NMA's Objections to the SASB Approach and Exposure Drafts

1. **The SEC's Existing Rules are Comprehensive:** Companies listed on the U.S. stock exchange are already required to report material risks in their regulatory filings with the SEC, including sustainability information that a company deems to have a material impact on its current or future financial performance. If the SEC wanted additional disclosures from companies, it would pursue informal or formal guidance to elicit additional information.

Additionally, any stakeholder interested in obtaining further information from a company on its sustainability performance may contact that company directly to encourage additional disclosures and engage in direct dialogue with the company on these issues. SASB's efforts to intrude into this process as a third party and push an aggressive campaign on expanded disclosures that are irrelevant to what a "reasonable investor" would expect from companies is entirely inappropriate. In the end, the *company and not SASB* is in the best position to determine what sustainability information is material to its operations and whether it should be disclosed. Furthermore, there are a multitude of robust voluntary disclosure programs on sustainability that SASB ignores in the development of its program, which only results in an additional scheme that does little to provide clarity and continuity for companies or their investors.

2. **SASB's "One-Size-Fits-All" Approach Improperly Expands the "Materiality" Standards under Current SEC Law:** In its briefing of NMA members, SASB proclaims that companies, within the confines of U.S. Supreme Court precedent, define "materiality". However, SASB's entire approach is to determine *for an industry sector* what is "material information" and "materiality" for disclosing sustainability issues. In the Conceptual Framework, SASB states that an aggregated analysis at the industry level is appropriate "because companies that

² **CORESafety** is an approach to mining safety and health focused on preventing accidents before they happen, using a management system approach to drive continuous safety improvement. Its objective is to have zero fatalities and a 50 percent reduction in mining's injury rate within five years (0:50:5). **CORESafety** is the first system to integrate leadership and culture into an industry management system that includes self-reporting. See <http://www.coresafety.org/>.

³ NMA's membership consists of U.S. and foreign public companies that are listed on the U.S. stock exchange and comply with existing U.S. Securities and Exchange Commission (SEC) regulations and filing obligations. NMA's membership also consists of private companies not governed by SEC regulations.

provide similar products and services tend to have similar business models, use resources in similar ways, and therefore tend to have similar impacts on society and the environment.” See SASB, Conceptual Framework at 9-10 (October 2013). SASB goes on to explain that “analysis of the impact of sustainability topics at the industry-level is meant to provide guidance for disclosure on sustainability topics that are *likely* to be material at the company-level.” *Id.* at 10 (emphasis added).

This analysis turns the whole concept of a “materiality” determination on its head. By acting as the self-empowered arbiter on sustainability accounting metrics – metrics that are based on largely insupportable research and findings on the regulatory trends and sustainability-related risks facing the industry *without* meaningful participation of industry experts – SASB acts in direct conflict with SEC’s approach to entity-specific materiality determinations and the Supreme Court’s fact-specific standard. Furthermore, by creating an “industry materiality” standard, SASB ignores the incredibly important fact that companies within the mining sector operate under a unique set of circumstances (i.e., the region in which a company operates, the scale of the operation, the grade of the ore mined and how it is processed, the ownership and size of the operation, etc.). Therefore, what is material for company “A” will not be material for company “B.” Providing “industry materiality” guidance will only serve to confuse shareholders and other stakeholders into believing that *all* of the activity and accounting metrics identified by SASB are material and companies that do not disclose all of them are misleading investors. SASB is not “complet[ing] the picture on corporate performance” as proclaimed by the organization in its presentation, but creating a system of disclosure that will mislead and confuse investors in their investment decisions.

- 3. SASB’s Reporting Requirements are Largely Inappropriate, Go Beyond the “Reasonable Investor” Standard and are Inappropriately Forward-Looking and Speculative:** Given our opposition to SASB’s actions to date in developing these industry sustainability accounting metrics, NMA will not provide a thorough critique of every topic and accounting metric provided in the Exposure Drafts. As a whole, NMA objects to the Exposure Drafts for coal operations and the metals and mining industry and lends no support to individual topics or metrics identified. However, given this opportunity to comment, there are several important overarching concerns with the approach SASB has taken. First, many of the metrics do not even meet SASB’s own criteria of being relevant/useful, cost effective, comparable and auditable. Second, many of the metrics are not reflective of the “reasonable investor” standard under U.S. securities laws. Finally, some of SASB’s reporting requirements are inappropriately forward-looking and speculative and beyond what the SEC requires. For example, speculation on the potential for greenhouse gas emissions embedded in proved coal reserves are not base level risks to investors. Such metrics do not account for advances in control technology that are arguably more relevant to investors than the metrics identified by SASB.

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All in all, NMA strongly opposes the finalization of the Exposure Drafts for coal operations and the metals and mining industry. NMA will not support this initiative as it moves forward and will advocate against the adoption of these standards in any future rulemaking proceedings with the SEC.

Sincerely,

A handwritten signature in blue ink that reads "Tawny Bridgeford". The signature is written in a cursive style with a large initial "T".

Tawny A. Bridgeford
Deputy General Counsel