June 17, 2022

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

RE: Comments on the Enhancement and Standardization of Climate-Related Disclosures for Investors; File No. S7-10-22

Dear Ms. Countryman:

NATSO, Representing America's Travel Centers and Truckstops, and SIGMA: America's Leading Fuel Marketers (together, the "Associations") submit these comments on behalf of America's retail fuel community in response to File No. S7-10-22, the proposed rule to enhance and standardize climate-related disclosures by public companies ("Proposal").[1]

More than 80 percent of retail sales of motor fuel in the United States occur at our members' outlets.[2] These companies – ranging from large, multi-national public companies to small, single-store family businesses – recognize that it is in their interest to serve their customers in a way that minimizes negative consequences for the climate. The Associations spend a great deal of resources working with policymakers and other stakeholders to identify and support legislative and regulatory reforms that are consistent with this objective. We view our engagement in this rulemaking as an important element of this larger effort.

The retail fuel industry is an indispensable asset to lowering the carbon footprint of the transportation sector in the United States. Fuel retailers should be viewed as surrogates for the consumer in that they identify the most reliable, lowest cost transportation energy available, and deliver that energy to every community in the country. Fuel consumers are extraordinarily price-sensitive, often driving well out of their way to save pennies on a gallon of motor fuel. Successful fuel retailers are deftly attuned and responsive to their customers' demands. Although the "green

[1] Securities and Exchange Commission, *The Enhancement and Standardization of Climate-Related Disclosures for Investors,* 87 FR 21334 (April 11, 2022) *available at* https://www.govinfo.gov/content/pkg/FR-2022-04-11/pdf/2022-06342.pdf [hereinafter "Proposed Rule"].

[2] NATSO represents approximately 5,000 travel centers and truckstops nationwide, comprised of both national chains and small, independent locations. SIGMA represents a diverse membership of approximately 260 independent chain retailers and marketers of motor fuel.

premium"[3] for cleaner transportation fuels is declining, in the absence of government incentives it generally remains more expensive for consumers to purchase more environmentally attractive fuels.

Well-crafted climate disclosure obligations can help "right-size" these economics and encourage consumers – and thus fuel retailers – to transition to lower carbon intensity fuels because those fuels are less expensive than the alternative. The Associations have long maintained that the most expeditious and economical way to achieve environmental advancements in transportation energy is through market-oriented, consumer-focused policies that encourage our membership to offer more lower-emission alternatives. Fuel retailers have demonstrated in recent years that they are prepared to invest in *any* transportation energy technology that their customers desire. And consumers desire inexpensive, competitively priced, and reliably available fuels.

The proper role of government is to develop policies that make energy technologies with more desirable emission characteristics cost-competitive with other sources of energy. The Associations have historically supported policies that do just that.[4] As the Securities and Exchange Commission ("SEC" or the "Commission") notes, the "potential adoption of climate-related regulatory policies including those that may be necessary to achieve the national climate goals that may be or have been adopted in the United States" will have consequential implications for businesses and for the climate.

The reverse is also true: if policies that make clean energy cost-competitive with traditional sources of energy are *not adopted*, it will inevitably mean that consumers will not gravitate toward those technologies. Moreover, businesses, responding to their consumers' desires, will be *less capable* of lowering their emissions footprint.

Fuel retailers and marketers are eager to work with the Commission to ensure that investors have useful, consistent access to material disclosures about public companies' climate-related planning and activities. Beyond merely providing information, such disclosure obligations could conceivably buttress other policy regimes that are designed to incentivize the Associations' members – and their customers – to gravitate toward lower carbon intensity transportation energy sources.

There is an appropriate role for the SEC to play in aiding those efforts. A narrowly tailored reporting requirement that focuses on Scope 1 and Scope 2 emissions, calculated in a manner that is consistent with other reporting regimes, some of which are already required under previously released SEC requirements, would both encourage companies to assess and reduce their carbon footprint and allow investors to assess companies' financial exposure to climate change.

[3] The Green Premium is the additional cost of choosing a clean technology over one that emits a greater amount of greenhouse gases. *See generally* Bill Gates, How to Avoid a Climate Disaster: The Solutions We Have and the Breakthroughs We Need. (Random House Inc, 2021).

[4] For example, the Associations have for years supported robust incentives for incorporating biofuels and other alternative fuels into the fuel supply. More recently, the Associations actively supported the electric vehicle charging infrastructure grant programs included within the Infrastructure Investment and Jobs Act, and are currently working with the U.S. Department of Transportation and state agencies to deploy EV charging infrastructure throughout the country.

Although undoubtedly well-intended, the Proposal needs to be refined to avoid unnecessarily burdensome, and in some cases counter-productive, obligations on public and private companies. This can be achieved while still facilitating necessary disclosures and encouraging businesses and their customers to undertake more climate-friendly investments and behaviors.

Below is a brief overview of the Associations' recommendations.

(1) Minimize the extent to which the final rule discourages capital formation, as well as access to capital and financing, and merger and acquisition activity, as these activities generally facilitate increased decarbonization investments.

a. *Provide transition relief of at least one year between the fiscal year in which a private entity or asset is acquired, and the year in which the acquiring company must disclose climate-related data related to the acquisition's operations and assets. Clarify that historical greenhouse gas ("GHG") emissions data is not "reasonably available" from periods pre-dating the acquisition of a previously private entity or privately held asset.*

Merger and acquisition ("M&A") activity in the fuel marketing sector tends to involve well-capitalized companies with the capabilities and experience investing in lower-emission energy technologies and infrastructure acquiring less well-capitalized companies, many independently operated, that are less likely to not have such experience or capabilities.

For example, incorporating biofuels and other liquid alternative fuels into the fuel supply improves fuels' emissions characteristics, but it is complex and expensive to do so. It requires expensive investments in the physical infrastructure and intellectual capital necessary to ensure the lower carbon intensity fuels can be price-competitive at retail. Electric vehicle ("EV") charging investments are equally complex and expensive. Under even the most optimistic prognostications, it will likely take many years before EV chargers' utilization rate is high enough for the investments to be profitable. Although the Associations' larger members are investing with long return horizons, many smaller members simply cannot afford to do so. Increased M&A activity in the fuel marketing sector, therefore, will improve the industry's ability to invest in environmentally friendly alternative fuels.

The Proposal will discourage this M&A activity. Under the Proposal, once a private company is acquired by a public company, climate data and disclosures related to the acquired company's operations will be required for the same number of years as presented financial statements of the public company (typically two to three years). For most companies, that will mean that they would have to provide two years' worth of climate-related historic data in their disclosures, including climate-related financial statement metrics (*i.e.*, financial impact metrics, expenditure metrics, and financial estimates and assumptions, including disaggregated climate-related impacts on existing financial statement line items). This would also include disclosure of at least Scope 1 and Scope 2 greenhouse gas emissions both in the aggregate as well as disaggregated by each constituent greenhouse gas (expressed in terms of carbon dioxide equivalent).

Public companies will be deterred from acquiring private entities that lack this climate-related data due to the additional costs associated with attempting to generate the data immediately after the sale. There may also be increased due diligence costs associated with attempting to evaluate the availability of climate-related data. Ultimately, these costs, burdens, and the additional legal risks will alter M&A economics. This will inevitably result in fewer well-capitalized companies that are able to make climate-friendly investments by acquiring smaller private companies that are not able to make such investments.

The final rule should provide accommodations so as not to stifle such M&A activity. Specifically, it should provide transitional relief of at least one year for acquired assets or acquired businesses. The SEC permitted a similar accommodation when it adopted the conflict minerals reporting rules, permitting registrants to delay the reporting on an acquired company's products until the end of the first calendar year that begins no sooner than eight months after the closing date of the acquisition.[5] A similar transition period here is warranted.

In addition, the final rule should stipulate that historical GHG emissions data is not "reasonably available" from periods pre-dating the acquisition of a previously private entity or privately held asset. This would enable private entities that may not be in a position to meaningfully lower their own carbon footprint to nevertheless be attractive acquisition targets for acquirers that are better suited to decarbonizing the target companies' activities. This would be consistent with the Commission's rules on internal control over financial reporting ("ICFR"), which permit companies and auditors to exclude from the ICFR assessment certain newly acquired entities.[6]

b. *Limit the final rule's disclosure obligations to Scope 1 and Scope 2 emissions, potentially reassessing the viability of Scope 3 disclosures at a later date once the Scope 1 and Scope 2 disclosure rules are well-established.*

The Proposal's Scope 3 disclosure regime could similarly discourage well-capitalized public companies from acquiring smaller, family-owned businesses that would otherwise be optimal targets for climate-friendly investments post-acquisition. Private companies, particularly smaller operators, are unlikely to have climate-related data available that would be necessary to undertake the analyses necessary for Scope 3 disclosures. They are almost certain not to have the data available in the specific form the Proposal requires. These issues also exist regarding sales of privately held *assets* to public companies; there is not likely to be readily available climate-related data, particularly investor-grade data, about the operations of these assets.

[5] "A resource extraction issuer that has acquired (or otherwise obtains control over) an entity that has not been obligated to provide disclosure pursuant to Rule 13q-1, or pursuant to another alternative reporting regime deemed by the Commission to require disclosure that satisfies the transparency objectives of Section 13(q) (15 U.S.C. 78m(q)), in such entity's last full fiscal year is not required to commence reporting payment information for such acquired entity until the Form SD submitted for the fiscal year immediately following the effective date of the acquisition. A resource extraction issuer must disclose that it is relying on this accommodation in the body of its Form SD submission." United States Securities and Exchange Commission, Form SD, Page 13 *available at* https://www.sec.gov/files/formsd.pdf.

[6] Securities and Exchange Commission. "Management's Report on Internal Control over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports" https://www.sec.gov/info/accountants/controlfaq.htm.

As the Commission acknowledges, "depending on the size and complexity of a company and its value chain, the task of calculating Scope 3 emissions could be challenging."[7] This is, in fact, a gross understatement; in reality, the size and complexity would be so enormous that it would stunt the very types of investments that the Proposal has been designed to incentivize.

For example, if a small privately held fuel retailer is interested in selling several of its older stores to a publicly held fuel marketing company, the acquiring company is likely to upgrade the stores' refueling infrastructure and equipment to be compatible with higher biofuel blends. The acquiror would also be far more likely to understand the EV charging market economics and grant opportunities and would be more likely to install EV charging stations at the locations. The acquiror would be less likely to pursue these opportunities, however, if they came with onerous Scope 3 disclosure obligations that are beyond the target company's capabilities. Potential acquisitions and associated environmental improvements, which may already subject to ESG-related financing restrictions, will become far less attractive if acquiring companies would be absorbing liability exposure associated with the target company's the lack of sufficient disclosure data.

Smaller private companies, and in particular family-owned companies built from the ground up, often will not have the resources or the data and records needed to generate the Proposal's mandatory disclosures obligations. Completing Scope 3 emissions data will often require companies to acquire information from counterparties, including counterparties that are not publicly traded and therefore not generally subject to SEC regulation. These counterparties may not have the control structures or regulatory reporting requirements of SEC registrants. In the retail fuels industry, most of the smaller, private companies purchase fuel from a variety of wholesalers, and transport fuel utilizing multiple trucking firms. It is unreasonable for the Commission to effectively impose a complex, expensive regulatory scheme on these businesses when the purported benefits are so attenuated.[8]

i) *The information generated by the Proposal's Scope 3 disclosure regime will not be useful*

Beyond discouraging climate-friendly M&A activity, the information generated by the Proposal's Scope 3 disclosure regime is likely to be extremely confusing and, as such, not material to investors and their investment decisions. As a result, it will not be useful. There are multiple methods for calculating Scope 3 emissions depending on the data that is available and used. The method chosen by a particular company can be dependent upon a company's business operations, as well as the complexity required to calculate Scope 3 emissions, along with other judgments a registrant makes in determining which methodology to use. Moreover, the underlying data necessary to quantify Scope 3 emissions vary in availability and quality. Even if third-party

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[7] Proposed Rule; P. 21930.

[8] The Commission acknowledges in the Proposal's preamble the "potential relative difficulty in data collection and measurement." [Proposed Rule; P. 21377]. The Commission further states that the methodologies for evaluating GHG emissions continue to evolve, particularly for Scope 3 emissions [Proposed Rule; P. 21411], and that data for calculating Scope 3 emissions largely depends on third-party data that may only be available at industry-average or national-average bases, or simply not available at all. [Proposed Rule; P. 21380-81].

attestation of Scope 3 emissions could be obtained, it can often differ based on which party does the attestation, adding an additional layer of complexity to an already complicated process.

For example, hydrocarbons are traded in complex global markets. Suppliers of hydrocarbons, due to the nature of petroleum supply and distribution systems, often will not know all end users. Many hydrocarbon products can either be blended into fuels that will be burned, or manufactured into chemical products that are not burned and, therefore, do not release GHG emissions. Companies that supply hydrocarbons to power plants or large industrial consumers will not necessarily know what the end use will be. Nor will they know whether parties downstream in the value chain have employed their own emission mitigation tools (such as carbon capture and sequestration or biofuel blending), which would be captured in their reports under the proposed regulation.

Scope 3 emissions will depend on consumer choices and options for specific uses and alternatives. For example, electricity users who might prefer to use renewable power may be precluded from doing so by state utility regulations. Similarly, although the carbon footprint of a particular volume of motor fuel may be fixed, the efficiency with which that fuel is used, and the extent to which the fuel is blended with biofuels before being dispensed into a vehicle, is consequential in evaluating its environmental impact. That impact will inevitably vary widely depending on users' vehicle choices and driving practices and distances, and retailers' capabilities for blending biofuels into the fuel supply. The subjective judgment required and inherent uncertainty involved with making such estimates most likely will render these Scope 3 disclosures almost meaningless.

Scope 3 emissions data reporting also frequently involves the double- or multiple-counting of emissions. For example, with respect to motor fuel, the Proposal would seemingly require disclosure of the same GHG emissions, from burning the same molecules, by several different companies: (i) the company operating the oil well producing crude oil; (ii) the company or companies providing pipeline, truck, or rail transportation of the crude oil to a refinery; (iii) the refinery converting the crude oil into gasoline or diesel or chemicals; (iv) the company or companies providing pipeline, truck, or rail transportation of the fuel to a wholesale bulk fuel terminal; (v) the wholesale bulk fuel terminal company; and (vi) the company operating the retail station at which motorists purchase fuel for their vehicles.

For all of these reasons, the Proposal's Scope 3 emissions disclosure regime is not ready for prime time and should be abandoned in the final rule. As proposed, the regime would discourage climate-friendly M&A activity while saddling small businesses with impossible data collection and reporting obligations, all to provide a veneer of comparability. This false comfort would obscure material differences across the quantitative emissions that different companies disclose – utilizing diverse and varying data and methodologies – in their good faith attempts to navigate the complexities and uncertainties embedded in the Proposal's disclosure mandates. This is not a productive exercise. The SEC instead should consider encouraging voluntary Scope 3 reporting to enable both the Commission and the business community to learn from the experience and potentially develop more useful, less onerous Scope 3 reporting requirements in the future.

Confining the final rule to solely Scope 1 and Scope 2 reporting requirements will still incentivize investments in lower carbon transportation fuels. Trucking companies' consumption of diesel fuel, for example, will be a Scope 2 emission for those firms. It will therefore be in those companies' interest to consume lower emission fuels (such as biodiesel, renewable diesel, hydrogen, and renewable natural gas). A well-crafted final rule that is limited to solely Scope 1 and Scope 2 and should, over time, support the evolution and expansion of electric vehicle charging infrastructure.

(2) **Maximize the consistency and reliability of required data disclosures, while minimizing the adverse consequences of inevitable inconsistencies.**

a. *Limit companies' liability for data variabilities.*

At the present time measuring and disclosing emissions, particularly Scope 3 emissions, is inherently inconsistent, incomparable and thus are of limited utility when assessing a company's environmental performance. The Commission states that the Proposed Rules are intended to provide comparable data that is decision-useful, when in fact the Proposal simply highlights the discrepancies in the reliability of different data sources for determining emissions.

Emissions data is inherently challenging for year-over-year comparisons, even when issued by the same company. Methodologies in calculations can change, and companies can experience significant swings in their Scope 1 and Scope 2 emissions (let alone Scope 3), for reasons that are completely outside their control. Existing methodologies allow for interpretation, and in some respects require it. Emissions, therefore, are commonly recalculated. Emissions factors are also revised by environmental agencies from time to time, which can meaningfully impact calculations. In such cases, under the Proposal, companies would either have to revise historical emissions data or accept that year-over-year emissions may not be comparable.

Although the Commission may determine that such volatility is necessary at the outset of this nascent disclosure regime, the final rule should minimize the extent to which it undermines the Commission's objectives. Companies should not be exposed to increased levels of *liability* associated with data inevitably needing to be amended or restated, including for Scope 1 and Scope 2 disclosures.

If the Scope 3 requirements are maintained, the final rule should explicitly stipulate that Scope 3 reporting will not be deemed fraudulent unless such disclosures are made or reaffirmed without a reasonable basis or disclosed other than in good faith. Safe harbor from liability should also apply to both registrants and those estimating emissions in their Scope 3 reporting chain Consistent accounting of Scope 3 emissions will be impossible to achieve under the Proposal's guidelines and timelines.

While the Proposal would provide a safe harbor for Scope 3 emissions disclosures such that they would not be deemed fraudulent unless it is shown that such disclosures were made or reaffirmed without a reasonable basis or disclosed other than in good faith, it is not clear how companies should form a "good faith" belief in Scope 3 data received from a non-SEC-regulated company. It is also not clear whether the data provided by such a company would ever achieve a useful level of precision or comparability, or most importantly to the SEC mission, materiality. Variabilities in the range of GHG software reporting tools lead to wide discrepancies between tools.

> b. *Stipulate that companies must utilize the Department of Energy's Greenhouse Gases, Regulated Emissions, and Energy Use in Technologies ("GREET") model when modeling the carbon intensity of various transportation energy technologies.*

Argonne National Labs GREET model,[9] supported by the Department of Energy, was first released in 1995 and is updated annually after public comment. It has been used by government agencies, companies, and other organizations with more than 50,000 registered users. It is used by low carbon fuel programs such as California's Low-Carbon Fuel Standard and the Environmental Protection Agency's Renewable Fuel Standard. The GREET model contains extensive data covering various sectors, such as oil and gas, electricity, transportation, and agriculture. It is one of the few open-source emission models that has been widely adopted in the United States and around the world. It is the most comprehensive open-source model covering the "cradle-to-grave" emissions cycle for transportation energy. The model has recently been adopted by ESG Integrity – a leading provider of reporting solutions for the fuel and transportation industries under the current voluntary frameworks – where it is being used to calculate tailpipe as well as lifecycle carbon dioxide emissions (Scopes 1, 2, and 3) for fuel supply chain organizations. The transparent, reproducible, and verifiable modeling found in GREET allows industry to perform third party calculations without being exposed to accusations of "greenwashing."

The SEC has the opportunity in this rulemaking to create a uniform, reliable method for ascertaining the transportation sector's emission impacts by stipulating that companies must utilize GREET when modeling the carbon intensity of various transportation energy technologies. The Associations urge the Commission to include such a requirement in the final rule.

(3) **Provide additional time (1-2 years) for compliance with the Proposal and provide additional phase-in time (3-5 years) for reporting of GHG emissions and for the Reg S-X line-item disclosures; only require limited assurance for GHG emissions.**

The Proposal's implementation timeline is not feasible. It is unlikely that companies that have not already been tracking emissions will be able to provide investor-grade data on the timeline the SEC has proposed. While some companies have already engaged in voluntary reporting requirements under regimes that the SEC identified in the Proposal, many have not yet begun to establish the data collection, assessment, and reporting procedures needed for these efforts. These companies will need additional time to develop the internal reporting structures and controls, particularly around determining GHG emissions and Reg S-X line item disclosures. They will also need to hire or train additional staff or outside consultants to assist in these efforts. Even those companies that have been tracking emissions and making voluntary disclosures will need to devote substantial resources to refining their data collection protocols to acquire the data in the forms and with the level of precision that the Proposal requires.

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[9] *See* greet.es.anl.gov

Under the Proposal, accelerated filers and large accelerated filers will be required to include an attestation report covering the disclosure of their Scope 1 and Scope 2 emissions alongside related disclosures about the independent "GHG emissions attestation provider." The SEC defines the provider as "an expert in GHG emissions by virtue of having significant experience in measuring, analyzing, reporting, or attesting to GHG emissions." There are a limited number of independent attestation providers that meet this definition. Companies will inevitably face difficulties in identifying and retaining such a provider. There will likely be delays in receiving attestation reports as providers handle increased engagements to provide requisite attestation reports.

There will be additional challenges to incorporating the information from newly-acquired private entities or assets into the attestation reports. For companies that are obligated to report Scope 3 emissions, there will be challenges with incorporating Scope 3 data that did not previously track such information, and with verifying the accuracy of information if the target company previously tracked it.

All of these challenges will take time and require significant investment in operating systems to support and affirm data collection and reporting. As such, this will necessitate that the Commission provide more time for businesses to come into compliance with the proposed disclosure regime.

(4) **Enable companies that make emissions-reducing investments to reflect such reductions in their disclosures**

The Proposal does not sufficiently enable reporting companies to reflect emissions-reduction consequences of investments that they make. Rather than viewing these investments in a vacuum, the final rule should enable companies to contextualize them and, when the investments result in a net reduction of emissions, accurately reflect this reality in their disclosures.

For example, many fuel retailers are in the process of exploring and installing EV charging stations at their locations. Such investments are a top priority for the Biden Administration, which is in the process of implementing two grant programs totaling $7.5 billion over five years for the installation of such EV charging equipment. Installing charging stations should theoretically be the type of investment and risk-taking that the proposed disclosure regime would encourage and reward; in practice, however, any company that installs charging stations will need to reflect the increase in emissions associated with the additional on-site electricity consumption when vehicles are charged, *without* being able to reflect any purported *decrease* in emissions that occurs relative to gasoline consumption.

Climate-friendly investments are inherently risky and expensive. The Commission's proposed disclosure regime is an easy opportunity to mitigate these headwinds by rewarding companies that are willing to make such investments. The proposed scheme, however, would exacerbate rather than mitigate these challenges because the mandatory disclosures could be misinterpreted by investors as reflective of a company *contributing* to climate change rather than helping *solve* it. This is certainly not the outcome the SEC seeks. Companies that stake steps that result in net decreases of carbon emissions should be able to reflect those outcomes in their mandatory ESG disclosures.

Thank you for the opportunity to provide these comments. We would be happy to discuss any of these topics with the Commission as it moves forward in the rulemaking process.

Sincerely,

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