UNITED AIRLINES HOLDINGS, INC.

June 17, 2022

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

Re: Comments by United Airlines Holdings, Inc. on the SEC's Proposed Rules on the Enhancement and Standardization of Climate-Related Disclosures for Investors (File No. S7-10-22)

Dear Ms. Countryman,

United Airlines Holdings, Inc. ("United") appreciates the opportunity to submit its comments to the request by the Securities and Exchange Commission (the "SEC" or the "Commission") for public input on the enhancement and standardization of climate-related disclosures for investors (File No. S7-10-22) (the "Proposed Rules").

As members of an industry that depends on fossil fuels to operate, we recognize our contribution to climate change and our responsibility to solve it. United's commitment to operating an environmentally sustainable and responsible airline is woven into its long-term strategy and its values. To that end, we have set an industry-leading target to become 100% green by achieving net-zero greenhouse gas ("GHG") emissions by 2050 without relying on the use of traditional carbon offsets. To show progress on our pledge, we established a strong mid-term goal of reducing our carbon intensity by 50% compared to 2019 by the year 2035.

We applaud and support the Commission for its action on climate-related disclosures and generally support the policy goals of the Proposed Rules, including the disclosure of Scope 3 GHG emissions. Given that rating agencies do not evaluate companies' climate disclosures using uniform criteria, the Proposed Rules could increase the comparability—and therefore the utility—of the GHG emissions data and other climate-related disclosures provided by companies. We believe that our employees, customers and other stakeholders should know the actions that we are taking to reduce our environmental impact and mitigate our exposure to climate risks in the air, on the ground and at our facilities. We have demonstrated leadership in transparency with our SEC climate change disclosures by providing key climate change qualitative and quantitative data in our Annual Report on Form 10-K for the year ended December 31, 2021 ("2021 Annual Report"), including our 2019 and 2020 Scope 1 (direct), Scope 2 (indirect) and Scope 3 (other indirect) GHG emissions data and carbon intensity rates, our climate goals, how we intend to meet our goals and how we are incorporating our approach to climate change into our corporate strategy.

Although we generally support the policy goals of the Proposed Rules, we have provided in this letter a few recommendations that the Commission could adopt to improve the Proposed Rules. We believe that these changes would enhance the efficiency with which registrants comply with the final rules (the "Final Rules"). At the same time, our recommendations also could improve the utility, comparability and transparency of the climate data reported to investors and the public. While aspects of the Proposed Rules are modeled on the Task Force on Climate-Related Financial Disclosures ("TCFD") framework, there are several provisions in the Proposed Rules that move beyond the TCFD disclosure framework, which will require registrants like us that report according to the TCFD to spend significant and unnecessary resources revising their disclosures to provide a considerable amount of climate-related information that the investor community has not requested from registrants and may deem immaterial. We believe that the Final Rule should be centered more on materiality and should not be unduly burdensome and prescriptive, which would achieve the SEC's goals of providing decision-useful information on climate to investors.

In brief, we encourage the Commission to consider the following recommendations:

1. include a materiality qualifier for the proposed amendments to Regulation S-X and provide guidance on how registrants should determine whether severe weather events and other natural conditions are climate-related and how to take into account business activities that are only partially "transition activities;"

2. remove the expansive "value chain" concepts in the Final Rules;

3. remove the requirement to provide certain detailed, granular disclosures of physical risks and define "flood hazard" and "high water stress" to the extent the concepts are retained in Final Rules;

4. allow registrants to disclose their previous fiscal year's GHG emissions instead of the recently completed fiscal year's GHG emissions data in their Form 10-K filings (*e.g.*, in a registrant's fiscal year 2021 annual report, the registrant would report fiscal year 2020 GHG emissions data as United did in its 2021 Annual Report), clarify that registrants are not required to disclose internal GHG reduction targets or climate-related targets that do not relate to GHG emissions and include a broad-based safe harbor for all historical GHG emissions data disclosures; and

5. remove the requirement to disclose whether any board member has expertise in climate-related risks or, if the requirement is retained in the Final Rules, make clear that any directors identified as having climate-related expertise would not be deemed an "expert" for purposes of Section 11 of the Securities Act of 1933, as amended (the "Securities Act"), and move any governance-related disclosures of the Proposed Rules to the 400 series of Regulation S-K.

1. **The Final Rules Should Include a Materiality Qualifier and Additional Guidance About Identifying Severe Weather Events and Transition Activities for the Proposed Amendments to Regulation S-X.**

We urge the SEC to reconsider its approach under the proposed amendment to Article 14 of Regulation S-X, which would require disclosure of all metrics and impacts of climate-related events and transition activities on each consolidated financial statement line item unless the "aggregated impact" is less than one percent of any single line item.[1] Instead of the one percent threshold, the SEC should adopt a materiality qualifier consistent with its historical materiality threshold and prior SEC guidance for all climate-related financial metrics and impacts disclosures required by the Final Rules.

In an attempt to promote transparency and comparability regarding the financial impact of climate change on registrants, the proposed amendment to Article 14 of Regulation S-X would provide a bright-line affirmative disclosure obligation concerning certain climate-related financial statement metrics and impacts, which is an admirable goal.[2] We are concerned, however, that the one percent threshold may be too easy to trigger, which will make financial disclosures more complex because of the additional financial statement disclosure that the proposed amendment to Article 14 of Regulation S-X would require. In addition, this new bright-line standard could lead to overreporting by registrants, frustrating the policy goals of the Commission. For example, if a registrant's facility were to be damaged during a severe weather event such as a hurricane, insurance proceeds would mitigate the registrant's financial losses, but nonetheless, under the Proposed Rules, the disclosure would be triggered by the gross amount, and not the net amount, and thus would not account for mitigating factors such as insurance. As such, absent a materiality qualifier, investors would be overburdened by registrants' disclosure of information on the financial impacts of their physical and transition risks that the SEC and registrants, until this point, have deemed immaterial based on the SEC's current definition of materiality. This addition to a registrant's financial statement disclosure could lead investors to assess incorrectly the degree of importance of climate-related risks to the registrant's value thesis, causing investors to possibly believe that climate-related risks are more impactful to the registrant's operations than they truly are and harm investors with distorted information as a result. Adding the proposed amendment to Article 14 of Regulation S-X with a materiality qualifier that is consistent with the SEC's historical materiality threshold—instead of the one percent threshold—is in concert with the SEC's policy goals but avoids the potential risk of disclosing nonmaterial information that would overburden investors.

In addition, absent a materiality qualifier based on the SEC's current definition of materiality, the one percent threshold would contradict the guidance provided by the Commission in Staff Accounting Bulletin No. 99, which states that registrants should avoid the use of quantitative bright lines for the purpose of its materiality determination as auditors should "consider all [of] the relevant circumstances."[3] Under the Proposed Rules, registrants and their

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[1] *See* proposed 17 CFR § 210.14—01(b).

[2] *See* The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21334, 21337 (Apr. 11, 2022).

[3] *See* Staff Accounting Bulletin No. 99, 64 Fed. Reg. 45149, 45152 (Aug. 19, 1999).

auditors would lack the ability to consider all relevant circumstances related to a particular transaction or event and assess the materiality of the transaction or event; instead, registrants would be forced to disclose once they trigger the one percent threshold irrespective of any mitigating circumstances,[4] which would be significantly below the five-percent threshold used by some registrants and auditors in assessing materiality.[5] Further, for business activities, the primary purpose of which are not considered by a registrant to be "transition activities" but nonetheless are related to efforts to reduce GHG emissions or otherwise mitigate exposure to transition risks, it will be very difficult to determine what portion of such business activities would constitute "transition activities" that should be included in the one percent threshold. Because most general ledger systems are not designed to capture and classify the information required by the Proposed Rules, registrants would have to spend a substantial amount of resources expanding their existing financial reporting systems and internal controls so that they are able to reliably capture the data and make the classifications necessary to report the impacts that climate-related events and transition activities are having on each financial statement line item.

Lastly, absent a materiality qualifier or additional guidance from the SEC in the Final Rules as to how registrants should determine whether severe weather events and other natural conditions are climate-related or how to take into account business activities that are only partially transition activities, registrants would be incentivized to disclose the financial metrics and impacts of severe weather events and other natural conditions irrespective of whether such events actually are climate-related or how much such business activities actually constitute transition activities. As an airline, weather-related events often result in canceled flights as the safety of our passengers and crew members is our top priority. Based on the Proposed Rules, we would have no ability to isolate individual weather occurrences from severe weather events caused by climate change. We believe in the principle of disclosure and certainly a material amount of severe weather events as a consequence of climate change could threaten our profitability, which is precisely why we disclosed this possibility as an Item 1A Risk Factor in our 2021 Annual Report.[6] However, overburdening our investors with additional immaterial and granular details regarding weather events will not better inform nor protect investors.

2. The Commission Should Remove the "Value-Chain" Concepts in the Final Rules.

The SEC should remove the expansive, overly vague and unnecessary "value chain" concepts in the Final Rules. The inclusion of these concepts would put registrants in the position of having legal liability over information that they do not directly control, may not be able to assess and do not have readily available, on top of the imposition of an additional and costly reporting obligation.[7]

Under the Proposed Rules, registrants would be required to describe the actual and potential impacts of their physical and transition risks on their strategy, business model and

[4] *See* proposed 17 CFR § 210.14—01(b).

[5] *See* Staff Accounting Bulletin No. 99, 64 Fed. Reg. 45149, 45151-52 (Aug. 19, 1999).

[6] United Airlines Holdings Inc., Form 10-K (Fiscal Year 2021), 1, 23 (Filed Feb. 18, 2022).

[7] *See* proposed 17 CFR 229.1500(c).

outlook, which would include the impacts on their suppliers and other parties in their "value chain."[8] In addition, registrants must identify their "transition risks," which are defined to include actual or potential negative impacts on registrants' "value chains" attributable to regulatory, technological and market changes to address the mitigation of, or adaptation to, climate-related risks.[9] The inclusion of these "value chain" concepts in the Proposed Rules would require registrants to analyze and factor into their reporting controls the climate-related risks of third parties and disclose information that they do not control or may not be able to reasonably assess. In addition, even obtaining the necessary data would be challenging as, for example, a third party may not be willing to disclose the information required by the Proposed Rules to a registrant for competitive purposes. Further, registrants would need to assess the impact of climate-related risks on a supplier's pricing, which likely could not be determined reliably in light of other factors that impact pricing such as inflation, supply-chain disruptions, geopolitical events, non-climate-related regulations, competition, demand and more, all of which registrants would not necessarily know or be able to reasonably discern. The proposed requirement, therefore, exposes registrants to legal liability for information that they do not directly control, are not able to meaningfully assess and do not have readily available, which departs from the long-established historical disclosure standards under Regulation S-K.

For registrants with highly integrated supply chains—such as United—that work with many third parties (small and large) spanning the entire globe in all facets of their operations, the proposed requirement to disclose certain information regarding their "value chain" would cause such registrants to incur significantly increased compliance costs without providing any greater benefit to investors. Requiring registrants both to collect and model data concerning the impact of climate-related events on a third party's activities would be an uncertain and expensive undertaking. Because of the inherent degree of uncertainty, we expect that the disclosures will elicit only generic statements with assumptions and caveats that would do more to confuse than inform investors, thus frustrating the intended purposes of the Proposed Rules.

Lastly, the Proposed Rules vaguely define "value chain," extending upstream to "supplier activities" without a clear limitation and downstream to an ill-defined scope.[10] Due to a lack of clarification, the Proposed Rules could be interpreted as extending the standard materiality analysis to material impacts of registrants' customers as well as their partners. For registrants to undertake an assessment of the potential risks associated with each final customer across its "value chain" as well as their partners would be an extraordinary, if not impossible, task. We therefore encourage the Commission to remove the "value chain" concepts from the Final Rules.

3. The Commission Should Remove the Requirement to Provide Certain Detailed Disclosures of Physical Risks in the Final Rules.

While United generally is not opposed to the requirement to disclose its material climate-related physical risks that have had—or are reasonably likely to have—a "material" impact on its business or consolidated financial statements, we encourage the Commission to remove the

[8] *See* proposed 17 CFR 229.1500(b), (c), (t).

[9] *See id*.

[10] *See id*.

requirement to disclose certain granular information concerning physical risks that would be required pursuant to the Proposed Rules given the limited usefulness of such information to investors.[11]

Under the Proposed Rules, in instances where registrants deem a physical risk to their operations or consolidated financial statements material, they would be required to disclose the location of the properties, processes or operations subject to the physical risk (including the ZIP code or other similar identifier); the percentage of buildings, plants or properties that are located in flood hazard areas if flooding presents a material physical risk; and additional disclosure if a material risk concerns the location of assets in regions of high or extremely high water stress (*e.g.*, the amount of assets located in such regions and the percentage of total water usage from water withdrawn in such regions).[12]

Complying with the degree of specificity required by the Proposed Rules will cost significant time and resource allocation, which is concerning in light of the limited usefulness of the information (*e.g.*, disclosing a table or list of location ZIP codes) to investors.[13] To comply with this requirement, registrants with worldwide operations may need to create compliance programs and would incur significant compliance costs monitoring and tracking all the ways in which they and their value chain are subject to physical risks.[14] Further, registrants also would be required to update their calculations comparing the book value of the assets as a percentage of total assets on a yearly basis, including disclosures—down to the square meters—for assets located in flood hazard areas.[15] Moreover, registrants would be required to determine whether each described physical risk would affect registrants in the short-, medium- or long-term, requiring a level of precision that would be difficult for registrants to determine and model for purposes of their SEC disclosures. The practical realities of these proposed disclosures would require registrants such as United to undergo significant and costly verification and calculation processes, all for the purposes of complying with the Proposed Rules and taking time and resources away from focusing on our actual climate-related risks. Further compounding the difficulties associated with complying with this requirement is the lack of definition for terms such as "flood hazard" or "high water stress," two terms that we highly encourage the Commission to define to the extent these concepts are retained in Final Rules.[16]

Lastly, these adverse externalities of requiring such granular disclosures will not be distributed equally among registrants. For example, registrants such as United that own and operate many physical locations across the globe would need to disclose more detailed and granular information, including instituting methods for recording and controlling information, compared to registrants with more limited physical operations. Such an unequal burden would be a high cost to pay for such limited and immaterial information and it potentially would direct resources and

[11] *See* proposed 17 CFR § 229.1502(a).

[12] *See* proposed 17 CFR § 229.1500(k).

[13] *See* proposed 17 CFR § 229.1502(a)(1)(i)(A), (B).

[14] *See* proposed 17 CFR § 229.1502(a); *see also*, proposed 17 CFR § 229.1500(c).

[15] *See* proposed 17 CFR § 229.1502 (a)(1)(i)(A).

[16] *See* proposed 17 CFR § 229.1502(a)(1)(i)(A), (B); *see generally* proposed 17 CFR § 229.1500.

attention away from material risks facing registrants. Thus, for this reason and those mentioned in this section, we encourage the Commission to remove the more granular disclosures pertaining to physical risks.

4. The SEC Should Allow Registrants to Disclose Their Previous Fiscal Year's GHG Emissions Data Instead of Their Most Recently Completed Fiscal Year's GHG Emissions Data in the Form 10-K Filing.

We urge the Commission to permit registrants to disclose only their previous fiscal year's GHG emissions data (*e.g.*, as United did in disclosing its fiscal year 2020 GHG emissions data in its 2021 Annual Report) instead of their most recently completed fiscal year's GHG emissions data in the Form 10-K filing. We believe that there is not a strong enough benefit to be gained from requiring the inclusion of registrants' Scopes 1, 2 and 3 GHG emissions for their most recently completed fiscal year by February / March of the following fiscal year to warrant the inaccuracies, inconsistencies, costs and confusion that would result.

Under the Proposed Rules, registrants would be required to disclose their most recently completed year's Scopes 1 and 2 GHG emissions data and, if material, their Scope 3 GHG emissions data.[17] If the data is not reasonably available, registrants would be permitted to use a reasonable estimate of their GHG emissions data for their fourth fiscal quarter, in conjunction with their actual GHG emissions data for the first three fiscal quarters, so long as registrants promptly disclose in a subsequent filing any material difference between the estimate used and the actual GHG emissions data for the fourth fiscal quarter.[18]

For several reasons, we believe that the Commission should require disclosure of the previous fiscal year's GHG emissions data (*e.g.*, as United did in disclosing its fiscal year 2020 GHG emissions data in its 2021 Annual Report) and not the most recently completed fiscal year's GHG emissions data. For one, it will be nearly impossible for registrants to have their GHG emissions data for the most recently completed fiscal year verified in time for purposes of including such data in a Form 10-K filing. For instance, it may take until the following March (after the fiscal year end) for us to receive Scope 3 GHG emissions data from our partners; unlike financial data, Scope 3 emissions data is dependent upon a third party providing such data. Even when we receive such data, it likely would take until June for us and our preferred emissions attestation provider to verify and validate such data to the degree required for SEC disclosures. In addition, none of the existing climate disclosure frameworks, including those that are championed by investors and mentioned in the proposing release, require registrants to disclose their Scopes 1, 2 and 3 GHG emissions data for their most recently completed fiscal year by February or March of the following fiscal year. Thus, investors do not currently receive—or expect to receive—registrants' Scopes 1, 2 and 3 GHG emissions data for their most recently completed fiscal year within the standard Form 10-K reporting timeframe. The SEC should not impose a requirement solely to fit the disclosure of the data into the standard Form 10-K reporting timeframe, particularly given the granularity of the GHG emissions data required by the Proposed Rules. Investors can assess progress on public GHG reduction targets using the previous fiscal year's GHG emissions

[17] *See* proposed 17 CFR § 229.1504(b).

[18] *See* proposed 17 CFR § 229.1504(e)(4)(i).

data because such targets have longer time horizons. Therefore, waiting to ensure that registrants' GHG emissions data are thoroughly and properly vetted by registrants—as well as their GHG emissions attestation providers as required by the Proposed Rules—does not present any risk that investors would not understand registrants' climate-related and transition risks or progress toward achieving their targets.

As mentioned in the previous paragraph, connected to this discussion of the disclosure of registrants' GHG emission data is the disclosure of registrants' climate-related targets.[19] We believe that the SEC should clarify that registrants are not required to disclose internal GHG reduction targets or climate-related targets that do not relate to GHG emissions, as this may disincentivize registrants from setting ambitious internal goals and targets in the first place. Further, registrants also would lack an incentive to disclose such information as it could reveal sensitive and proprietary information that would be of limited value to investors. Due to the potential liability that could arise or adverse investor responses that could result if ambitious internal GHG or non-GHG emissions goals are not met, registrants could be dissuaded from taking action to reduce their environmental footprint, harming the policy goals of the Commission's proposal.

Additionally, the option to provide estimates for the fourth quarter in the Form 10-K filing and to correct any such estimates in a subsequent SEC filing that reports the material differences from the Form 10-K disclosure presents an unnecessary administrative burden that would be confusing to investors.[20] Requiring registrants to disclose their most recently completed fiscal year's GHG emissions data or, if not reasonably available, a reasonable estimate of such data would force registrants to provide fourth quarter estimates in their Form 10-K filing and then amend such estimates in a subsequent SEC filing.[21] As a result, registrants would be subject to a perpetual restatement of their GHG emissions data determinations, which is an unnecessary and arduous administrative burden for registrants considering a reasonable investor would be unable to rely on the estimate in any meaningful way until the registrant provides its finalized fourth quarter emissions data. Also, including GHG emissions estimates in the Form 10-K could be confusing to investors, especially considering the probability that investors will not read the subsequent disclosure with the actual GHG emissions data.

Further complicating matters, the lack of a broad-based safe harbor for GHG emissions would mean that registrants are exposed to a considerable amount of liability. Thus, we encourage the Commission to include a broad-based safe harbor for all historical GHG emissions data in the Final Rules since many elements of the GHG emissions data required by the Proposed Rules would be based on estimates and assumptions and may need to be revised in the future. While we felt comfortable disclosing certain GHG emissions data in our 2021 Annual Report, the Proposed Rules call for significantly more detail—such as emissions disaggregated by each constituent greenhouse gas—on an accelerated timeline that may require the use of additional estimates and assumptions.

[19] *See* proposed 17 CFR § 229.1506(a)(1).

[20] *See* proposed 17 CFR § 229.1504(a).

[21] *See id*.

5. The Commission Should Remove Any Requirement to Disclose Whether Any Board Member Has Expertise in Climate-Related Risks and Move the Governance-Related Disclosures of the Proposed Rules to the 400 Series of Regulation S-K.

We believe that the Final Rules should not include the requirement to disclose whether any board member has expertise in climate-related risks.[22] Disclosure of board members' climate-related expertise could give a misleading impression that such expertise on the part of a board member is necessary for a registrant to have effective climate-risk governance or that the presence of such a board member means that a registrant is effectively managing its climate-related risks. Moreover, the term "climate expertise" is not defined in the Proposed Rules nor is it made clear by the Commission whether some degree of on-the-job training can constitute climate expertise.[23] To the extent that the SEC retains this requirement, we encourage the Commission to define this term and provide guidance for how a director can obtain such expertise. In addition, existing Items 401(e)(1) and 407(c)(2)(v) of Regulation S-K already elicit sufficient disclosure related to the background as well as the capabilities of board members and, as a result, we believe that the inclusion of this requirement will serve to confuse and overburden investors.[24]

If the climate-related expertise requirement noted above is adopted, we encourage the SEC to make clear that any director identified as having climate-related expertise would not be deemed an "expert" for purposes of Section 11 of the Securities Act.[25] The Proposed Rules do not state that being identified as having climate-related expertise would not result in a director being deemed to be an "expert" for purposes of Section 11 of the Securities Act, unlike other recent SEC rule proposals and the existing disclosure requirements regarding audit committee financial experts.[26] As a result, registrants' directors who are identified as having expertise in climate-related risks could be deemed to be "expert(s)" for purposes of Section 11 of the Securities Act, which could impose additional duties and liabilities on those directors.[27]

Lastly, we also suggest that any governance-related disclosures in the Proposed Rules—such as the requirements to identify directors with climate-related expertise and to disclose the board's role in risk oversight of the registrant, including how the board administers its oversight and the effect that this has on the board's leadership structure[28]—be moved to the 400 series of Regulation S-K in the Final Rules,[29] similar to other Item 407 disclosures.[30] We believe that the corporate governance disclosures regarding management and the board would be most informative to investors while reviewing other corporate governance disclosures in registrants' proxy

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[22] *See* proposed 17 CFR § 229.1501(a)(1)(ii).

[23] *See generally* 17 CFR § 229.1500.

[24] *See* 17 CFR § 229.401(e)(1); *see also* 17 CFR § 229.407(c)(2)(v).

[25] *See* 15 U.S. Code § 77k.

[26] *See* proposed 17 CFR § 229.407(j)(2).

[27] *See* 15 U.S. Code § 77k.

[28] *See* proposed 17 CFR § 229.1501(a)(1)(iii)-(v).

[29] *Compare* proposed 17 CFR § 229.1501(a), (b) *with* 17 CFR § 229.407(h).

[30] *See generally* 17 CFR § 229.407.

statements. By including this information with other similar governance disclosures in the proxy statement, the Commission avoids overburdening investors with information in the Form 10-K and centralizes governance information in the proxy statement.

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United applauds the Commission for its ongoing efforts to address climate change disclosures and we appreciate the opportunity to present our views. United remains committed to working towards a sustainable and carbon-neutral future for the aviation industry.

Respectfully submitted,

Robert S. Rivkin
Senior Vice President & Chief Legal Officer
UNITED AIRLINES HOLDINGS, INC.