June 17, 2022

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

Re: File Number S7-10-22; The Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Ms. Countryman:

The undersigned coalition of the nation's leading vehicle rental and leasing companies appreciate this opportunity to provide the following comments and information to the Securities and Exchange Commission (SEC) regarding its proposed rules on The Enhancement and Standardization of Climate-Related Disclosures for Investors (File Number S7-10-22).

Commenting Organizations

Founded almost seventy years ago, the **American Automotive Leasing Association (AALA)** is a national industry association comprised of commercial automotive fleet leasing and management companies. Membership includes domestic and international companies as well as family-owned businesses. AALA also has an associate member category that is open to any company or organization with an institutional interest in the automotive leasing industry.

Each year, the commercial automotive fleet leasing industry purchases approximately 900,000 new domestic vehicles for long-term use across the United States. These purchases account for a substantial percentage of the annual commercial output of vehicles sold by the Big Three domestic auto manufacturers. While these vehicles are used predominately for sales and service functions, the range of commercial usage is broad. AALA members provide comprehensive fleet consulting and management services to businesses of all sizes, non-profit organizations, and governmental agencies. Approximately 33% of these vehicles are replaced every year with safer and more fuel-efficient vehicles and, to an increasing extent, Zero Emission Vehicles.

The **American Car Rental Association (ACRA)** is the national representative for over 98% of our nation's car rental industry. ACRA's membership is comprised of over 300 car rental companies, including all of the brands you would recognize such as Alamo, Avis, Budget, Dollar, Enterprise, Fox, Hertz, National, Sixt and Thrifty. ACRA members also include many system licensees and franchisees, mid-size, regional and independent car rental companies as well as smaller, "mom & pop" operators. ACRA members have almost 2 million registered vehicles in service in the United States, with fleets ranging in size from one million cars to ten cars.

ACRA members on average purchase one in every ten new light duty vehicles sold in the United States each year. In 2021, ACRA members purchased over 800,000 new light duty vehicles, down over 50% from pre-pandemic levels due to constraints on motor vehicle manufacturing

caused by supply chain challenges. 25% of all light duty vehicle miles travelled in the United States each year are in a rented vehicle. Thus, the car rental industry is a key participant in the drive for sustainable mobility. In many instances, a driver's first experience in a Zero Emission Vehicle will be in the rental car context. Combining all these factors, the car rental industry likely is the most important shared mobility stakeholder for converting "motor vehicle trips" by an individual to "zero emission vehicle trips" – even more important than individually-owned vehicles. Several ACRA members have made public announcements regarding plans to purchase hundreds of thousands of zero emissions vehicles in the coming years – providing hard evidence that the U.S. car rental industry is leading the way to a future sustainable mobility system.

The **Truck Renting and Leasing Association (TRALA)** is a national trade association that serves as the unified and focused voice for the truck renting and leasing industry. As the national representative of the truck renting and leasing industry, TRALA is interested in state and federal regulatory requirements that affect TRALA members and their customers.

TRALA's mission is to foster a positive legislative and regulatory climate for companies engaged in leasing and renting vehicles and trailers, as well as related businesses, operating in the North American marketplace. TRALA's regular membership includes more than 500 companies representing almost the entirety of truck renting and leasing operations in the United States. TRALA represents more than 30% of the new truck sales each year, and our members our industry leaders in incorporating new technologies into their fleets, including being early adopters of Zero Emission Vehicles in applications where feasible.

Summary of Major Concerns

Over the last decade, automobile manufacturers have made substantial progress in the area of environmental sustainability, with particular focus on greenhouse gas (GHG) emissions reductions. This progress has been accomplished through robust, voluntary actions, featuring the advancement of new technologies and is clearly demonstrated by the productive partnership between our members and the automobile manufacturers resulting in the increasingly rapid transition from vehicles powered almost exclusively by internal combustion engines to a Zero Emission Vehicle focus, including electric vehicles. In many respects, our members have responded effectively to investor and marketplace concerns related to climate change impacts, including through effective communications with the public concerning GHG emissions. The vehicle rental and leasing companies represented by the undersigned associations believe that the SEC's remarkably broad and complex series of compulsory disclosure and reporting requirements could actually impede that progress.

The overly prescriptive proposed disclosure and reporting rules conflate a legitimate public policy dialogue – how best to respond to climate impacts and concerns over GHG emissions – with the SEC's core mission. Addressing climate concerns may fall squarely within the mission of other executive branch agencies, but it appears that the SEC has elevated this particular policy concern to a level of prominence far exceeding its legislative mandate.

The breadth and scope of required data disclosure and reporting as proposed presents the real possibility of flooding the marketplace with speculative information. The inherent nature of the highly subjective data relevant to Scope 3 emissions alone, would likely result in disclosure of an enormous volume of unreliable information, contrary to the accepted standards of financial "materiality" established by the U.S. Supreme Court. This result would not advance the proposed rule's stated objectives of "consistent, comparable, and reliable information" for shareholders and investors because too much of the required information is subject to legitimate accuracy concerns and likely duplicative accounting.

Certain aspects of the proposed rule present particular compliance concerns. Specifically, the mandated calculation and reporting of Scope 3 emissions (including 15 all-inclusive categories of upstream and downstream emissions) will impose tremendous administrative costs on companies of all sizes, but may particularly negatively impact smaller companies. The recommended accommodations for implementation of Scope 3 emissions reporting are wholly insufficient to address the level of effort that would be placed on our members in order to comply with these burdensome standards.

Other sections of the proposed rule concerning board and executive management also go beyond any other existing requirements addressing most other specific policy issue that routinely affect companies. While our members recognize the importance of sustainability and GHG emissions issues, that area of concern is but one of a myriad of challenges that face our member company boards and management teams every day. Imposing additional staffing and expertise requirements on this particular issue sets a bad precedent for potential future disclosure requirements related to any number of other serious management challenges.

Finally, among our serious procedural concerns over the proposed rule, we believe the SEC's regulatory cost-benefit analysis is fundamentally flawed. The Commission fails to consider in its analysis the large administrative and resource implications to non-publicly traded companies that would clearly face a huge volume of inquiries from reporting entities. The demands to produce estimated emissions data would profoundly impact our members that are otherwise not subject to the SEC's jurisdiction, as the rule's proposed mandate to report potential upstream and downstream GHG emissions focuses heavily on the transportation sector.

As described below, if the SEC publishes a final GHG reporting and disclosure rule, substantial modifications should be made to address these, and other, major concerns.

Specific Comments and Recommendations

The Proposed Rule Would Burden Registrants and Companies Not Required to File with the SEC

The proposed range of mandated GHG emissions reporting and disclosures would be complicated and expensive for companies of all sizes. Although publicly available resources exist that can assist with some of the complex calculations required by the proposed rule, each filing entity would likely need to enlist the support of technical consultants simply to comply with this rule. For larger entities, these resources would be required in addition to the company's other routine environmental, health, and safety compliance team. For mid-size to smaller filing entities, many of which may not have separate staff capable of addressing these matters, the resources required to comply with the proposed rule would be especially burdensome.

The proposed rule's administrative impacts will not be limited to registrants. Members of our organizations that are non-filing entities, as well as privately-held companies in virtually all economic sectors, will also bear a tremendous burden because of the magnitude of requests for information associated with the upstream and downstream emissions related to Scope 3 reporting. While the full extent of that burden is difficult to estimate, the scope of the rule's reporting requirements make it virtually certain that requests for information, data gathering, and disclosure would extend to almost all companies, even if they would otherwise not be subject to SEC jurisdiction.

A company's compliance resources would be further stretched by the proposed rule's mandate for independent, third-party attestation requirements concerning all Scope 1 and Scope 2 emissions disclosures. Although the proposed rule currently excludes the attestation requirement for Scope 3 emissions disclosures, the Commission has asked whether attestation should be expanded to that category, as well. In any event, the need to retain qualified individuals to audit and verify the full scope of data collection and interpretation for even two of the three major emissions categories identified in the proposed rule would be time-consuming and expensive.

The demand for increased resources and time necessary to comply with the proposed rule also would be exacerbated due to rapidly changing circumstances. From technological innovations within each industry, to updated (and perhaps competing) methodologies in GHG emissions calculations, to unpredictable geopolitical issues, tracking all emissions on an annual basis would be extremely challenging. Despite even a comprehensive and good-faith effort to do so, the quickly evolving underlying facts and methodologies would likely make one year's reported data outdated almost as soon as it was reported. As a result, the benefits to investors and shareholders from gaining access to a good portion of the information required by the proposed rule will be negligible.

Our members agree with other commenters that the scope of the proposed rule is so broad that the burdens presented by this rule alone may actually discourage companies from entering public markets. A system of voluntary company GHG reduction planning, goal-setting, and reporting would continue to foster innovation and creativity and is generally far preferable than the proposed rule's mandatory system. Again, for many smaller entities, the resources and human capital responsibilities required to comply with the rule are so substantial that time and money would be diverted from basic business growth operations.

If, despite these concerns, the final rule retains the framework of reporting/disclosure and management requirements, the SEC should revisit the scope of the proposed rule by considering whether to:

- amend the annual reporting framework and making climate and GHG emissions disclosures due every two to three years;
- extend the deadlines for the first reporting for at least one year; and
- eliminate the requirements for independent attestation, and at a minimum, retain the exclusion of attestation for Scope 3 emissions disclosures.

Scope 3 Reporting and Disclosure Requirements Are Particularly Problematic

The proposed rule's stated goal of producing reliable and consistent information related to GHG emissions for the benefit of the investor and shareholder community would likely not be achieved by the Scope 3 reporting and disclosure requirements due to the extreme variability and questionable accuracy of estimated Scope 3 emissions data. For instance, the SEC admits that "depending on the size and complexity of a company and its value chain, the task of calculating Scope 3 emissions could be challenging" or that it "may be difficult to obtain activity data from suppliers and other third parties in a registrant's value chain, or to verify the accuracy of the information."[1]

The Commission's recognition of these realities mirrors the assessment made in the 2021 Task Force on Climate-Related Financial Disclosures (TCFD) Guidance on Metrics, which also detailed the complexity and subjectivity underlying Scope 3 emissions data.[2] The TCFD's guidance recognizes that not all companies "have the resources to present quantitative

[1] See 87 Fed. Reg. 21,380; 21,390.
[2] https://assets.bbhub.io/company/sites/60/2021/07/2021-Metrics_Targets_Guidance-1.pdf ("The Task Force, however, is not a standard-setting body and has defined metric categories broadly to allow flexibility for organizations, industries, and jurisdictions to develop and adopt specific climate-related metrics to support these metric categories. The current ability of organizations and industries to specify metrics applicable to these categories will vary, and the state of methodologies and data may need to further evolve in some areas.") *See* pg. 14.

information across all metric categories," and instead "encourages organizations to begin where resources and expertise allow."[3] The high likelihood for application of conflicting assumptions to determine which activities to include in Scope 3 activities, the potential double-counting of emissions between multiple organization or industries, and even the overlap between the categories of upstream and downstream emissions only highlight the burdens on our members to compile and then to make sense of potentially confusing and inconsistent Scope 3 emissions data.

This reporting effort would involve a lengthy series of subjective estimates related to activities and actions by third parties far beyond the control of registrants. For our members alone, the number of assumptions concerning the upstream and downstream value chain are significant. For example, our members partner with many smaller, less sophisticated customers who likely do not have institutional controls to estimate all categories of downstream emissions. In addition, the potential transition to all-electric vehicles will be dependent on the availability and reliability of charging infrastructure. It is extremely difficult to predict those trends, and therefore, the likely impact on future emissions. Our members and our customers also cannot predict with certainty how consumer preferences will play out over time, as those trends are dependent on a wide range of larger economic factors.

Scope 3 upstream and downstream categories create an uncertain and complex series of subjective estimates for activities/risks far beyond the control of filing entities, including legislative or regulatory proposals, actions of third parties, technological innovations, and consumer preference trends, to name a few. Generic statements or broad estimates or ranges for GHG emissions in light of some or all of these considerations would not lead to the sort of comparable, consistent, and reliable information that the proposed rule intends to place in the hands of interested parties.

By definition, Scope 3 reporting seeks to capture GHG emissions throughout a company's value chain. In order to estimate emissions related to just a few of the key downstream activities identified in the proposed rule that are most directly related to our members (transportation and distribution, use of sold products, and end-of-life treatment of sold products), our members would be forced to rely on a vast number of third parties for data. How will a registrant achieve confidence in the accuracy of whatever information it receives (if it receives timely responses at all) from these disparate sources? Tracking our supply chains would be extremely challenging, in large part, because there is no reasonable way our members could mandate that all third parties report their emissions in the same manner.

These major questions are just a few of the myriad of variables that would have to be considered by our member registrants in making even a good-faith estimate of Scope 3 emissions. This lack

[3] *Id.* at 15.

of reliability directly calls into question whether the Scope 3 emissions reporting requirements would produce the sort of information that a "reasonable investor" would consider in making an investment or shareholder voting decision. The proposed rule's authorization of estimates or explanations for lack of data would exacerbate the unreliability of disclosures offered by registrants.

In many ways, therefore, the wide variety and questionable reliability of third party data calls into question the "materiality" of Scope 3 reporting, a standard that has been considered by the U.S. Supreme Court on several occasions and that has been implemented in several different contexts by the Commission.[4] The proposed rule stretches this concept too far in the context of GHG emissions and climate change. In general, the rule improperly extends legitimate public policy "concerns" with climate issues to fundamental financial "materiality" issues, thereby resulting in the SEC's unprecedented requirements for detailed GHG emissions reporting. Even using the standards articulated by the Supreme Court, the rule goes too far.

In addition to the uncertainties associated with calculating Scope 3 missions, the task would also be complicated and expensive for companies of all sizes, but especially for mid-size and smaller companies. The methodologies most frequently cited in the SEC's proposed rule clearly demonstrate the complexities associated with Scope 3 estimates. The Greenhouse Gas (GHG) Protocol contains a lengthy reporting "schedule" called the "Greenhouse Gas Protocol – Corporate Value Chain (Scope 3) Accounting and Reporting Schedule" which includes over 150 pages of detailed instructions and definitions. As evidence of the complexity of its own recommended "schedule," the GHG Protocol includes an appendix labeled, "Uncertainty in Scope 3 Emissions."[5] Complying with just this aspect of the proposed rule would require a tremendous amount of time and resources, including the likely need to hire and train an entire new category of accounting experts.

Unlike other aspects of the proposed rule, Scope 3 emissions disclosures would create a particularly large and highly uncertain administrative and financial burden for non-registrants. Any entities that can be viewed as part of the upstream or downstream product value chain, as outlined in the proposed rule, would be faced with an expansive list of inquiries from a wide range of reporting entities needing to accumulate data. As mentioned below with respect to the Commission's regulatory cost-benefit analysis, it does not seem as if the SEC has acknowledged this reality in its calculations concerning the rule's potential regulatory burden. Our private members specifically identified this aspect of the rule as the greatest concern to them.

[4] TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 499-50 (1976); Basic, Inc. v. Levinson, 485 U.S. 224 (1988).
[5] https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf

In light of all these issues, many of which are echoed in the Commission's own cautions over the complexity of Scope 3 emissions tracking and disclosures, this category of reporting and disclosure should be made purely voluntary. Because the discipline associated with the calculation of upstream and downstream emissions is not yet mature (and is evolving rapidly), it is inadvisable to mandate that reporting as part of the proposed rule at this time.

If mandatory Scope 3 emissions reporting is retained in the final rule, however, several major conditions triggering this reporting and/or accommodations related to the requirements should be revised:

- The phased-in timing should be pushed out at least 24 months, and the proposed threshold for materiality should be raised significantly to a higher threshold relative to a company's relative proportion of upstream/downstream to direct greenhouse gas emissions.

- Scope 3 emissions vary widely by industry sector, making a uniform disclosure and reporting regime unfair and unproductive. As a result, there should be a regulatory basis for distinctions between industry sectors if Scope 3 reporting remains mandatory in the final rule. The proposed rule acknowledges this reality, but fails to address in any meaningful way the vast differences between major industry sectors concerning GHG emissions and climate sustainability plans.

- Any final rule should eliminate the trigger for Scope 3 reporting based solely on a company's stated goals to reduce greenhouse gas emissions. Simply put, imposing this requirement on companies would create a disincentive for registrants not otherwise required to report under the proposed rule to avoid publicly stating emissions reductions goals.

- The proposed rule's Scope 3 "safe harbor" provisions should be expanded to ensure the maximum protection for registrants from all claims related to its reporting efforts. As described above, the high degree of uncertainty and likely widespread variability in data collection underlying disclosures and reporting raises serious questions about any potential SEC enforcement action based on that information. A registrant should never be subject to an enforcement action or penalized because it sought, in good-faith, information from a multitude of third parties that turns out to be unreliable.

Other Aspects of the Rule Should Be Revisited or Revised

Cost-Benefit Analysis

The SEC's regulatory cost-benefit analysis concedes the massive potential burden of its proposal. Yet even the estimated cost is likely dramatically understated and is therefore faulty for several reasons.

First, the Commission fails to consider the costs imposed by the rule on private companies/non-filing entities. The basis for the reporting rule is the attempt to capture the entire value chain of a product or industry. The full upstream and downstream list of potential sources of GHG emissions is expansive, and by definition would include countless sources of information from non-filing companies. The breadth of the Scope 3 emissions reporting requirement will touch all corners of the economy by requiring time and resources to assist SEC registrants. It is highly unlikely the SEC's analysis successfully captured even a fraction of that cost.

Second, the SEC's assessment of potential costs does not reasonably address the high degree of complexity associated with major aspects of the proposed rule. In order to comply with the disclosure requirements in a way that avoids any regulatory risk, companies will have to navigate a quickly-evolving discipline and make a series of subjective and complicated decisions. Any regulatory program with that degree of uncertainty has far greater costs than a more predictable program. It is unclear if the SEC's cost-benefit analysis has factored in that complexity.

Third, the cost-benefit analysis does not adequately consider the relatively marginal benefits associated with the reporting, given the likely uncertainty and/or vagueness of a good portion of the reported data. An accurate cost-benefit ratio would accurately reflect how the information would assist the investor community. If the majority of Scope 3 emissions are reported in wide-ranging estimates (or explanations why estimates cannot be offered), it is unclear what benefits, if any, result from compliance efforts. The SEC's analysis likely over-counts the potential benefits of its reporting requirements.

Business Confidentiality

Our members also have serious business confidentiality concerns with respect to certain "transition planning" disclosures mandated by the proposed rule. The SEC defines transition planning extremely broadly, to potentially include a company's assessments of and planned reactions to physical effects (like flooding, heat, etc.), governmental actions related to climate concerns, consumer trends, etc. The cumulative nature of these considerations would likely go to the heart of an entity's basis business planning, including innovations designed, in part, to address future climate realities. Mandating publication of at least a good part of this information could produce severe competitive disadvantages. The rule does not adequately balance the need

for business confidentiality with the disclosure of information to protect and inform the investment community.

Conclusion

The breadth of the SEC's proposed GHG reporting and disclosure rule has the potential to substantially increase compliance costs for both our reporting and non-reporting members. The inevitable uncertainty and likely high variability in the accuracy of emissions data underlying the required disclosures also may not satisfy the rule's stated justification, to provide consistent and comparable information to better educate the shareholder community. The proposed rule's mandates go beyond the SEC's authority and are inconsistent with the well-established legal standard of "materiality" that would trigger reporting requirements. These concerns also call into question how or when the agency could take reasonable enforcement actions based on the reported information.

For all these reasons, we respectfully urge the SEC to revisit several major elements of the proposed rule as reflected in our comments and recommendations.

Sincerely,

Mike Joyce, Executive Director
American Automotive Leasing Association

Sharon Faulkner, Executive Director
America Car Rental Association

Jake Jacoby, President & CEO
Truck Renting and Leasing Association