RETAIL INDUSTRY LEADERS ASSOCIATION

99 M Street, SE
Suite 700
Washington, DC 20003

www.rila.org

June 12, 2021

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **Request for Public Input on Climate Risk Disclosure**

Dear Chair Gensler:

The Retail Industry Leaders Association (RILA), on behalf of its members, is pleased to respond to the U.S. Securities and Exchange Commission's (SEC's) March 15, 2021 request for public input on potential climate risk disclosures (Climate Disclosure RFI). By way of background, RILA's members include the largest and most innovative retailers. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than $1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

RILA appreciates the opportunity to provide feedback on the SEC's Climate Disclosure RFI regarding potential new climate risk disclosure requirements. Climate change is a bigger threat than any one individual, company, industry, or government can address on its own and can only be addressed through the collective efforts of all parties. RILA and its members share the SEC's concern about climate change and its potential impact on the U.S and global economies and our communities.

While the retail industry is not among the largest contributors to greenhouse gas (GHG) emissions, it is nonetheless working diligently to address and reduce the climate change impact related to retail operations. These efforts include building and retrofitting facilities and stores to increase energy efficiency and use of renewable energy, reducing waste and excess packaging, and streamlining and creating more efficient supply chain, transportation, and distribution systems to decrease GHG emissions. Through RILA's Sustainability and Energy Management committees, RILA members have been collaborating and sharing leading practices to drive emissions reductions for over a decade. Just a few examples of this work are the development of RILA's Retail Sustainability and Energy Leadership Models, which help companies at all levels of maturity and are supplemented by deeper dive projects, including resources on energy efficiency and renewable energy financing completed under a Department of Energy (DOE) cooperative agreement.[1]

---

[1] For additional information regarding the efforts of RILA and its members to lower GHG emissions in retail operations, *see* RILA Sustainability Committee, https://www.rila.org/committees/sustainability-

Effective public policy has a critical role to play in protecting communities and economies globally from climate change's most disruptive impacts, and the United States should not shy away from its obligation to act. RILA's members have identified climate-related corporate disclosure and governance as one of the top five impact areas within RILA's Retail Climate Priorities published earlier this year.[2] The other climate-related priorities are transportation, buildings and facilities, clean energy, and waste. These priorities were identified based on the GHG policy areas where the retail industry is a key stakeholder and are organized by the GHG impact areas where emissions categories most closely intersect with retail impact and spheres of influence. The retail industry is an ally in the fight against climate change and stands ready to partner with policymakers and provide constructive insights for each of these priorities as we work towards achievable goals.

RILA and its members fully support the SEC's goal of providing investors with all material information relevant to investment decision making, including climate risk-related information and look forward to working with the SEC to do so. As the SEC moves forward in determining how best to achieve this goal, RILA urges the SEC to proceed using its long-held principles-based and materiality-focused approach to disclosures with a view toward transparency and investor protection. Now is not the appropriate time for the SEC to depart from these foundational principles for several key reasons. Comprehensive and accurate measurement and attribution of organizations' GHG emissions is an immature and evolving discipline, and there is no consensus on which metrics are minimally necessary for investors to evaluate what climate risk may be material for particular industries or issuers. Instead, there is an evolving yet immature marketplace of ideas concerning voluntary climate risks disclosure, based in part on an ongoing dynamic among issuers, investors, nongovernmental organizations, and other stakeholders. This marketplace of ideas should be allowed to develop. Additionally, the SEC staff lacks scientific expertise in this area and has no history of mandating prescriptive and broad subject-matter disclosure on so fluid and complex a topic.

Moreover, there are other, more appropriate, forums outside of the SEC regulatory sphere (*e.g.*, other governmental agencies, international efforts, nongovernmental organizations, specific industry and company efforts, and public-private partnerships) that currently are engaged in efforts to directly address climate risks and lower GHG emissions. These ongoing efforts are critical to effecting real change and lowering climate risks. Should the SEC continue down the path of mandating climate disclosures, it should take these considerations into account and pursue an approach that is thoughtful, deliberate, and reflective of the interests of all stakeholders, including issuers.

RILA and its members appreciate the SEC's efforts to gather input and information from all interested stakeholders before embarking on a formal rulemaking process on this important issue.

---

committee; Retail Sustainability Model,.https://www.rila.org/retail-compliance-center/retail-sustainability-management; RILA's Energy Committee, https://www.rila.org/committees/retail-energy-management-program; Retail Energy Model, https://www.rila.org/retail-compliance-center/retail-energy-management. DOE cooperative agreement project: https://www.rila.org/focus-areas/sustainability-environment/financial-management.

[2] RILA Retail Climate Priorities. (April 2021) https://www.rila.org/retail-climate-priorities.

RILA's members acknowledge the importance of all the Questions for Consideration that the SEC raised in its request for public comment. Several other industry association commenters have provided detailed analysis of the SEC's statutory authority and mission as well as process and procedure considerations for the SEC to include in its deliberations. Rather than duplicating those considerations here, RILA's comments focus on several fundamental issues highlighted by some Climate Disclosure RFI questions and explain how certain aspects of those questions are relevant to the retail industry.

Specifically, RILA's comments cover three key areas discussed in more detail below: 1) factors for the SEC to consider when developing a climate disclosure requirement; 2) challenges with quantification and comparability of GHG emission data; and 3) suggested format and timing of any potential SEC mandatory climate disclosure requirements and liability considerations. We urge the SEC to take into consideration the comments and concerns detailed below if it moves forward in developing new climate risk disclosure regulations.

I. *Factors for the SEC to Consider When Developing a Climate Disclosure Requirement*

RILA's members see value in aligning and standardizing expectations for climate disclosures. Existing climate disclosure frameworks are useful tools in assisting issuers with crafting voluntary climate-related disclosures and RILA's members understand the desire among some stakeholders that the SEC adopt one of the current voluntary disclosure frameworks as a mandatory climate disclosure requirement. However, no single current voluntary disclosure framework thus far has proven appropriate for every issuer. Therefore, RILA believes that the SEC should not adopt a single framework. Furthermore, RILA does not believe it would be appropriate for the SEC to authorize an existing third-party organization to act as a standard setter with the power to define mandatory climate-related disclosures for all issuers. Instead, the SEC should provide issuers with flexibility in preparing climate-related disclosures, thereby continuing the SEC's proven approach of principles-based disclosure with a focus on materiality.

A. *Lack of Consensus on Current Climate Disclosure Frameworks and Fundamental Concerns Regarding Their Fitness for SEC Reporting Purposes*

The existing voluntary climate disclosure frameworks (*e.g.,* SASB, TCFD, and CDSB) each provide unique benefits. However, the proliferation and misalignment of reporting standards, requests, and ratings hinder companies' abilities to report in a manner that is consistent, reliable, and comparable. While some RILA members already create voluntary climate-related disclosures that are informed by one or more of these existing frameworks, the use of these frameworks by RILA members is still at a nascent stage. At this time, there is no consensus among RILA's members as to which voluntary climate disclosure framework or set of frameworks (if any) is suitable for all retail companies. In addition, even those members that make voluntary climate disclosures do not report on all metrics within a specific framework for a variety of reasons, including lack of available reliable data and onerous time and cost burdens. Rather, RILA members that make voluntary disclosures most often use climate disclosure frameworks for guidance purposes only.

Moreover, at a more basic level, there is an open question as to whether any of the current voluntary climate disclosure frameworks would be an appropriate mandatory SEC disclosure

standard. Many existing voluntary climate disclosure frameworks leverage the Greenhouse Gas Protocol (GHG Protocol) categorization of emissions. Unlike the SEC's financial reporting requirements for issuers, which are intended to provide investors with information to inform investment decisions, the fundamental purpose and function of the GHG Protocol is to provide accounting standards and tools for organizations and entities to measure and manage their GHG emissions footprints. In contrast to the information included in financial statements that issuers file with the SEC, information provided pursuant to the GHG Protocol and voluntary frameworks on scope 3 emissions will necessarily be incomplete. As discussed in more detail in Section II below, in many instances scope 3 emissions information will be based upon estimates constructed during an emissions inventory exercise that in and of itself can take months, even with third-party support. This reliance upon estimates does not inhibit issuers from understanding their GHG footprint to inform management decision-making on topics, such as where to focus their emission reductions efforts. However, the data gathered would not have the rigor or timeliness otherwise required by SEC annual, quarterly, and periodic reports, and proxy statements, and therefore should not be subject to the same liability regime.

B. ***Need for Robust Governance and Standard-Setting Oversight***

While the idea of the SEC designating an existing climate disclosure framework organization as a SEC climate disclosure standard-setter may be understandably appealing to some, RILA urges the SEC to exercise caution before doing so for several reasons. First, the designation of such an outside organization to take on a quasi-regulatory role in establishing mandatory disclosure requirements for issuers, without the SEC having any role in providing oversight or determining governance and due process, would be a novel approach and unprecedented in SEC rulemaking. Such an approach would be in stark contrast with the Financial Accounting Standards Board, the private standard-setting body subject to SEC oversight that establishes generally accepted accounting principles.

Second, RILA is concerned that the existing voluntary climate disclosure standard-setting organizations may not have sufficiently robust governance systems and oversight in place at this time to take on the quasi-regulatory role of establishing mandatory disclosure requirements for issuers. Any new climate disclosure standard should reflect the input of *all* stakeholders, including issuers. Several existing framework organizations currently lack the necessary governance to ensure that the concerns of all stakeholders, specifically issuers, are adequately reflected in the development and modification of climate risk disclosures. Also, RILA members are concerned that without the formal notice-and-comment rulemaking process and other protections of the Administrative Procedure Act in place for any new mandatory climate disclosure standards including future changes, issuers would not be afforded the same due process protections that currently exist within the SEC rulemaking process.

As a result, RILA does not recommend appointing a single standard-setting organization for climate disclosure purposes. As discussed in more detail in section III below, RILA instead recommends that the SEC establish guidelines on metrics and methodologies for companies to use when voluntarily reporting on emissions through corporate social responsibility (CSR)/environmental social and governance (ESG reports posted to company websites. If the

SEC moves forward with a mandatory climate disclosure requirement, RILA recommends that the SEC be responsible for the development of any new climate disclosure framework, methodologies, and guidance. If developed thoughtfully, clearly established expectations by the SEC regarding climate disclosure and reporting would enable companies to better benchmark their climate performance, allow analysts to rate companies' performance based on consistent criteria, and provide investors with consistent data on which to make decisions.

In the event that the SEC chooses to designate an independent climate disclosure standard-setting body for SEC reporting purposes, the SEC should have oversight of such body and the independent body should be subject to appropriate procedural safeguards, including notice-and-comment rulemaking. Whether developed by the SEC or by a designated standard-setting organization, any mandatory climate disclosure requirements should be limited to matters that intersect with the SEC's scope of jurisdiction over investor protection and issuer transparency related to material financial risks. Climate-related questions outside of investor protection and issuer transparency are more appropriately addressed in other public policy forums.

C. *Providing Issuers Maximum Flexibility in Reporting*

RILA members strongly urge that the SEC's current principles-based, materiality-focused approach to climate risks be the foundation of any new SEC disclosure requirement. These two bedrock principles provide issuers with flexibility in crafting disclosures that actually inform investor decision-making. To that end, RILA urges against the SEC substituting a rigid "one-size-fits-all" climate disclosure framework. When issuers are given flexibility, the existing climate disclosure frameworks are helpful in assisting issuers with crafting voluntary climate disclosures that reflect their business operations and material climate-related risks. No single existing framework is appropriate for every issuer and mandating a specific climate disclosure framework would raise several concerns.

First, issuers with international operations may already be subject to climate disclosure requirements under an existing framework. As jurisdictions across the globe begin considering mandatory climate disclosure requirements, RILA is concerned that a decision by the SEC to adopt a specific framework could subject issuers to a patchwork of disparate climate risk reporting requirements solely based on where such issuers operate. Not only would this impose unnecessary and onerous time and cost burdens on issuers, but it would also reduce the comparability of disclosures across issuers operating in different reporting jurisdictions. Therefore, until there is broader international consensus regarding the scope and methodologies of mandatory climate disclosures, rather than mandating a specific climate disclosure framework, the SEC should provide each issuer with the flexibility to select the climate disclosure framework(s) (or elements thereof) that is or are most "fit for purpose" with that particular issuer's material climate risks and geographic profile.

Second, when used flexibly by issuers, industry-focused frameworks have some key advantages, but there are also critical challenges with taking a strict industry-focused approach. The industry-focused approach of some existing frameworks can be helpful in informing an issuer of climate-related considerations to potentially include in its voluntary climate disclosure. For example, industry-specific standards tailor the level of disclosure

based on the level of GHG emissions by industry, allowing issuers to focus on the material climate risks their operations may present. However, many issuers, including RILA members, operate complex businesses that span across multiple industries. The complexity of any given issuer's business creates reporting challenges under an industry-focused framework, most notably the challenge of defining the "industry" in which such an issuer operates.

Take for example the situation where a large retailer sells third-party brands of hardware, appliances, and other household products. This retailer also has some vertical operations that develop and manufacture its own private brand products. In trying to determine what "industry" it falls under for climate disclosure purposes, this retailer could be considered as operating in the retail sector to the extent it operates physical stores and an e-commerce business. Or it could be included in the category of chemical manufacturers to the extent it develops, manufactures, and sells private brand cleaners. Alternatively, it could be included in the category of heavy industrial manufacturing with respect to its production of appliances. The more complex an issuer's business, the more extensive and multi-dimensional the issuer's industry-specific climate risk disclosure requirements would be. For this hypothetical retailer, it is unlikely that one single industry-focused standard would be appropriately tailored to the issuer's material climate-related risks. Instead, allowing this issuer to select the most "fit-for-purpose" climate disclosure framework, while also borrowing elements from other frameworks, would ensure that the issuer produces the most decision-useful disclosures.

Given these considerations, the SEC should continue its proven approach of requiring principles-based disclosures with a focus on materiality. While RILA members would not object in principle to rulemaking that requires issuers affirmatively to consider making voluntary climate-related disclosures, if the SEC moves forward with a mandatory climate disclosure requirement, the concerns noted above argue in favor of a more flexible approach that allows issuers to adopt or borrow from a variety of climate disclosure frameworks. With this flexibility, issuers will be well positioned to provide investors with disclosures that best inform their investment decisions.

II. *Quantification and Comparability of GHG Emissions Challenges*

RILA members broadly support providing voluntary qualitative climate risk disclosures, which have a broad purpose and are intended to detail not only companies' carbon footprints but also efforts to lower GHG emissions and mitigate climate risks. Any mandatory climate disclosure requirements should establish clear expectations for disclosure and reporting and focus specifically on material climate-related financial risks and impacts. Doing so will provide focus on consistent data collection and reporting efforts over time. In contrast, a broad mandatory requirement to disclose quantified and verifiable information on all scope 1, 2 and 3 GHG emissions would present significant challenges, including data collection challenges, and would lead to untimely, incomplete, and uneven data that ultimately would not provide investors with timely, comparable information for decision making.

A. *Data Collection Challenges*

Those RILA members that currently make voluntary climate disclosures already invest substantial resources in quantifying their scopes 1 and 2 GHG emissions. Even so, challenges like missing or incorrect data and information may lead companies necessarily to develop methodologies to gap fill or approximate missing scopes 1 and 2 data. Furthermore, it is nearly impossible for retailers to gather reliable and verifiable information on their entire scope 3 GHG emissions footprint for several reasons.

Retailers face significant challenges collecting emissions data related to scope 3 GHG emissions for product supply chains. Retailers sell millions of products each year to U.S. consumers. These products are comprised of an untold number of component parts and raw materials. A vast majority of RILA's members are not vertically integrated and, even if they sell private brand products, do not own the facilities that manufacture the goods they sell. Instead, retailers purchase finished consumer products from hundreds of thousands of U.S. and foreign brands, manufacturers, and suppliers. Retail companies generally do not have the ability to verifiably measure the emissions of their tier-one suppliers resulting from the manufacturing process for finished goods, much less the emissions of second- and third-tier suppliers of component parts or raw materials for those finished products.

When attempting to gather the data necessary to calculate scope 3 product supply chain emissions, retailers must rely on a long list of third parties, the majority with which they have no contractual relationship requiring disclosure of GHG emissions information. Retailers must therefore rely on the parties with whom they do have a contractual relationship (typically tier-one suppliers) to try to collect cumulative data (or estimated data) from component and raw materials suppliers to develop approximate holistic, product-specific emissions profiles. For purposes of a mandated climate disclosure, this emissions data is most accurately and appropriately disclosed by the product suppliers themselves as part of their own emissions profiles rather than retailers sharing estimated subsets of this data on their behalf.

Another challenging area involves the calculation of scope 3 GHG emissions related to transportation (ocean, air, rail, and truck) and distribution services. While some RILA members own and operate their own fleet of trucks, the vast majority of RILA members contract for transportation from third-party service providers. Retailers are dependent upon these third parties for scope 3 GHG emissions data and, much like emissions from product supply chains, may have limited visibility into the accuracy of the data provided and methodologies used to calculate the emissions allocated to the retailer. Furthermore, any scope 3 GHG emissions data related to the production of consumer products or transportation and distribution services for retailers will be redundant to the extent that any vendor or service provider is also a U.S. issuer. Given this inevitable redundancy, the value of such disclosures will be limited and outweighed by the costs and administrative burdens on retailers to collect this information.

Retailers also face challenges calculating scope 3 GHG emissions related to consumers' use of products sold by the retailer and the end of life for such products. Each year, retailers sell millions of consumer products to U.S. consumers, ranging from food, apparel, footwear,

accessories, toys, electronics, sports equipment, pet supplies, appliances, office supplies, home décor, home repair, garden, auto repair, tools, and hardware to health and beauty products and countless other items. While there are a few emerging tools available to assist retailers in making scope 3 GHG emissions calculations in connection with consumer use of specific products (*e.g.*, the Environmental Protection Agency's ENERGY STAR emission calculator for certified ENERGY STAR products), there is no overarching methodology or tool that would help retailers calculate scope 3 GHG emissions from consumer use and end of life for each of the hundreds of thousands of categories of products sold each year. This absence of tools and methodologies means that consumer use and end-of-life product emission calculations will necessarily be based on inconsistent methodologies and estimates, resulting in information with limited usefulness to investors.

Given the challenges of collecting and validating the broad range of data that would be required to provide comprehensive and accurate scope 3 GHG emissions reporting, RILA urges the SEC to only include scopes 1 and 2 GHG emissions data in any future mandatory climate disclosure. Limiting mandatory climate disclosure to scopes 1 and 2 GHG emissions would not prevent a company from choosing to voluntarily disclose some or all its scope 3 climate emissions along with any appropriate disclaimers as to its current accuracy.

B. ***Challenges with Comparability of Emissions Data***

It should be noted that while any SEC requirement for disclosure of GHG emissions data could potentially result in decision-useful information for investors regarding a specific issuer, it would not necessarily promote comparability between issuers. Whether a company reports a particular source of GHG emissions under scope 1, 2, or 3 is entirely dependent upon the specifics of that company's operations. Not all companies within an industry have uniform supply chain structures or operations. For example, within the retail industry, retail companies can have disparate core businesses (*e.g.*, grocery retail supply chains and operations compared to apparel or auto parts retailers). And even within the same retail business categories (*e.g.*, grocery, auto report, big box, discount, specialty, apparel, pharmacy, home furnishing, sporting goods, etc.), retailers may have disparate business models (*e.g.*, "brick and mortar" stores, omnichannel, and e-commerce). As a result, for purposes of their voluntary emissions disclosures, the same source of GHG emissions would fall under different scope categories.

For example, a hypothetical Retailer A that owns and operates its own truck fleet would report related emissions data in scope 1. In contrast, for Retailer B that contracts for trucking services, the emissions related to transportation for these services would be reported under the scope 3 category. Retailer A's strategy to own and operate its own trucking fleet is not inherently any more or less sustainable than Retailer B's strategy to contract for those services. However, a comparison of the two companies without note of this necessary context may make Retailer A look "worse" because it would report higher scope 1 emissions. Additionally, requiring disclosure of scope 3 GHG emissions would not necessarily enhance stakeholder understanding of a particular issuer's climate impact and risks. Rather, these differences can be driven by the issuer's ability to collect information and the specific methodology and underlying assumptions the company uses to calculate scope 3 GHG emissions. In our hypothetical, issues with collecting comprehensive, accurate, and reliable

scope 3 GHG emissions data could in fact make Retailer B appear to be a lower producer of emissions and a "better" company regardless of whether Retailer A or Retailer B truly had lower GHG emissions related to its operations.

Another example of where retailers may be challenged to calculate scope 3 emission data involves a retailer that sells a wide range of frequently changing products. These retailers may face significant challenges collecting data on emissions from consumers' use of products sold by the retailer and end of life for these products. If a retailer is unable to gather reliable information, it may choose not to disclose any information or set climate-related goals for that category. A second retailer may have a simpler product assortment for which data collection or estimation by extrapolation is easier and, as a result, this retailer would be able to make a fuller disclosure. This fuller disclosure does not necessarily make the second retailer's operations any more climate-friendly or less subject to climate risks than the first retailer, and a comparison of the two disclosures will not provide investors with comparable actionable data.

These challenges argue against the SEC imposing added onerous administrative burdens on issuers in connection to any SEC mandatory climate disclosure requirement (*e.g.*, XBRL tagging in connection with 10-K filings meant to enhance comparability) that would be resource intensive without yielding sufficient benefits for investors. Understanding the additional context of a particular retailer's product mix, supply chain operations, and business model is essential to understanding the limitations of providing comparable industry data that aligns with the GHG Protocol scope categorization structure.

III. *Format and Timing of Any Potential Mandatory Climate Disclosure Requirement and Liability Considerations*

While some issuers have developed robust processes and procedures for collecting emissions data and extensive experience reporting on these issues in their voluntary corporate CSR/ESG reports, other issuers are only just beginning to consider how to gather and disclose climate-related information. Furthermore, gathering reliable inputs for producing these voluntary disclosures is still challenging, as the systems for collecting this data internally and externally for issuers is still at an undeveloped stage. Given these challenges, any new mandatory climate disclosure requirement should not be subject to mandatory third-party audit or assurance requirements, nor should they be subject to CEO and CFO certification, as appropriate processes for validating this data are not widely available. Additionally, given the extended timeline associated with collecting the required data, such climate disclosures should not be mandated for inclusion in issuers' annual reports or proxy statements and should be furnished rather than filed within SEC filings. Regarding liability considerations, to the extent any such mandatory disclosures involve projections or assumptions involving future events, these disclosures should be considered forward-looking statements. Finally, any new mandatory climate disclosures should have an extended implementation period to allow market-based tools and resources to develop and give issuers time to establish processes and procedures for collecting and reporting data.

A. *Challenges with Validating Scope 3 Climate Disclosure Data Argues against Requiring Sarbanes-Oxley Certification*

Those RILA members that currently make voluntary climate disclosures on scopes 1, 2 and 3 emissions (whether in their company CSR/ESG report or some other statement) have extensive processes and procedures in place for validating or assuring the integrity of the reported data and underlying methodologies and provide appropriate disclosures on the accuracy of such data. These robust assurance processes for climate risk disclosures can involve internal review (*e.g.*, by internal audit teams), external third-party assurance service providers, or both and may be too difficult and costly to implement for some smaller public companies.

Based on member feedback, RILA notes that, in general, the climate data that issuers are able to collect from internal sources (*e.g.*, scopes 1 and 2 GHG emissions related to stores and facilities) can be subject to reasonable validation processes. However, requiring assurance for *all* scope 3 GHG data for which collection is entirely dependent on the cooperation of third-party suppliers or service providers would be challenging. Those third parties, such as vendors that operate in jurisdictions outside the U.S., often lack sufficiently sophisticated systems and data to meet SEC assurance standards. Furthermore, in some instances, third parties may simply be unwilling or unable to provide the inputs for these GHG emissions calculations, further limiting companies' ability to report on and the adequacy of assurance for these items.

In addition, the field of climate disclosure assurance is relatively new and there are currently a limited number of service providers with the necessary skills and experience to perform climate disclosure assurances. Any mandatory requirement for third-party assurances would place strains on the already limited number of service providers and potentially result in a situation where issuers would be unable to obtain a qualified service provider to perform a mandated assurance review.

Therefore, given the lack of widespread adoption of reliable systems and processes for quantifying and assuring climate risk-related data and limited number of qualified third-party climate disclosure assurance service providers, climate risk disclosures should not be subject to the third-party certification processes of the type that currently apply to financial reporting under the Sarbanes-Oxley Act.

B. *Reporting Windows for Emissions Data Support Not Requiring Companies to Include Information on Annual Reports or Proxy Statements*

Unlike the sophisticated, well-developed information technology systems that many issuers use for financial reporting purposes, no comparable, widely adopted, and commercially available systems exist for emissions reporting. There can be significant lags associated with gathering emissions data, a process that depends heavily on third-party cooperation and compliance with reporting requirements that may or may not be included in existing vendor contracts. For example, consider a company conducting an emissions inventory through scope 3 for the first time with the help of a third-party consultant. Even with a sole focus on domestic emissions, there can be significant delays (several months or more) in getting

accurate domestic energy consumption data and information. These challenges are exacerbated for retail issuers with international retail or sourcing operations. Conducting a full inventory may take up to six months or more, even with the support of a specialized firm. The inventory will inevitably include many estimates, extrapolations, and necessarily use best available data, which itself will be outdated by at least a few months by the time the inventory is completed and metrics are reported.

Moreover, given the resource intensity of the exercise, the company will be unlikely to conduct this exhaustive analysis every year, but instead will typically use the most recent emissions estimates for ongoing internal guidance for management decisions as to where to focus company emissions reduction efforts. Also, because of the data accuracy and timeliness limitations, the company would likely only be able to seek assurance on their scopes 1 and 2 data, which at best may not be complete and fully accurate for two or more months while missing or inaccurate information and data are addressed. If mandatory reporting is required for all issuers across industries, then the increased demand for third-party emissions inventory specialists, vendors, suppliers, and assurance providers would cause the process to take even longer.

Not only would requiring concurrent financial and climate disclosure reporting impose significant burdens and resources constraints on retailers' financial reporting, internal audit, and other business teams, as detailed above, it is unlikely that many issuers could provide meaningful disclosure of annual emissions and other climate-related data with sufficient time to incorporate these disclosures into their immediately subsequent annual reports or proxy statements. Instead, this information would have to be included in the following year's annual report or proxy statement. An annual report or proxy statement that includes current financial information in conjunction with dated (18 months or more old) climate-related information may not be useful to investors in making investment decisions.

Therefore, RILA urges the SEC not to require mandatory climate disclosures on annual reports or proxy statements.

C. *Alternative Formats for Climate Disclosures and Liability Considerations*

In light of all of the above challenges and concerns raised in these comments, RILA and its members believe that, at this time, the best approach would be for the SEC to continue to allow companies to voluntarily report climate-related disclosures through corporate CSR/ESG reports posted to company websites. To ensure the materiality and consistency of investment decision-making information provided, the SEC could establish new guidelines on metrics and methodologies for companies to use when voluntarily reporting on emissions. Such guidance could benefit issuers by providing them with clearer guidelines to navigate an increasingly crowded field of disclosure frameworks and evolving sustainability disclosure practices.

For those companies that are already providing climate-related information in their CSR/ESG reports, SEC guidance for voluntary reporting could help streamline and focus data collection and reporting efforts. This approach would also give those companies that have not previously reported emissions data the time necessary to develop processes and to put into

place systems for doing so. Moreover, such an approach would allow time for the development of international consensus on the appropriate metrics, methodologies, and formats for climate disclosure. Finally, such a thoughtful and considered approach by the SEC would give time for market-based tools and resources to develop to assist issuers in climate risk reporting.

If the SEC deems that separate mandatory climate disclosures are necessary, RILA believes that the better approach for reporting climate-related disclosures is by making such disclosures on Form 8-K or a new climate-specific disclosure form rather than on Form 10-K. Providing this information on Form 8-K or a climate-specific form would give issuers that face varying challenges with collecting climate-related data more flexibility in the timing for their reporting. This flexibility will be of key importance in the early stages of any new required climate-related disclosures, as issuers will have varying degrees of sophistication in collecting and compiling this information.

Additionally, these disclosures should be "furnished" on Form 8-K or a new climate-specific disclosure form as opposed to "filed." This approach would be consistent with both the existing practice of many issuers that furnish their annual CSR/ESG Reports on their Form 8-K and recent SEC actions in the area of disclosures related to payments for resource extraction. As the SEC recently noted in a separate rulemaking, disclosures that are for the purpose of increasing transparency of corporate operations, as opposed to disclosures intended to provide investor protection, are more appropriately treated as "furnished."[3] Climate risk disclosures are more akin to disclosures that are intended to provide transparency of a particular issuer's production of emissions and broader impact on the global climate, rather than traditional disclosures intended to provide investor protection. This is the case even though some investors may consider these disclosures in making investment decisions.[4] Treating these disclosures as furnished, and thereby reducing the potential liability associated with such disclosure, will also facilitate a more fulsome and open process by issuers in disclosing this information. Nonetheless, requiring this information to be furnished will still address concerns with misleading climate-related disclosure (*i.e.*, "greenwashing"), as the disclosures will remain subject to the antifraud provisions of the Securities Exchange Act of 1934.

Finally, to the extent the SEC adopts mandatory climate-specific disclosure requirements, many of these disclosures should be considered "forward-looking statements" under the Private Securities Litigation Reform Act (the "PSLRA"). Climate change is an emerging and constantly changing risk and many of the disclosures related to climate change will inherently involve predictions, projections, or statements premised on assumptions about future climate change, emissions reduction targets, and projections about risk mitigation and future energy use, among a myriad of other areas. Therefore, in the event the SEC adopts mandatory climate-specific disclosure requirements, disclosures that are not based solely on

[3] Securities and Exchange Commission, Disclosure of Payments by Resource Extraction Issuers, 86 Fed. Reg. 4,662, 4,685-86 (Jan. 15, 2021).

[4] *Id.* at 4,686.

historical fact but instead involve predictions, projections, or assumptions should be considered forward-looking statements and afforded the associated safe harbors under the PSLRA.

D. ***Timeframe Needed for Implementation Of Any New SEC Climate Disclosure Requirement***

RILA's recommended option that the SEC provide guidelines for voluntary climate reporting could be implemented by the regulated community within a reasonable timeframe. However, if the SEC moves forward to impose additional mandatory quantitative climate risk disclosure requirements, it is of paramount importance that any disclosure requirements be phased in over an extended transition period determined in collaboration with a multi-stakeholder group. As noted above, not all issuers are currently reporting on climate-related emissions. These companies will need adequate time to set up the necessary data collection processes for meaningful disclosures. Companies that currently provide voluntary reporting also will need time to modify and adapt their processes to comply with the new mandatory reporting requirements. This could include changing the type of data collected, the timing of data collection, and modification of assurance and validation processes.

If companies are required to report all scope 3 emissions, it is even more critical that companies be given a realistic timeframe for implementation. As detailed in section II above, retailers will need time to work with suppliers and service providers to gather supply chain product-related and transportation emissions data, as well as consumer use and end-of-life product-related data. There are some ongoing efforts to develop tools and resources to address the needs of issuers around data collection and emissions calculation methodologies (e.g., Environmental Protection Agency Center for Corporate Climate Leadership). However, these efforts are just beginning and have not yet developed comprehensive, universally accepted resources and tools. Lastly, having an appropriately long phase-in for implementation will allow time for the development of climate data collection, analysis, and market-based reporting tools and resources, which will help ensure the fulsomeness and accuracy of issuers' climate disclosures.

As the SEC moves forward with its deliberations on this issue, it is critically important that all interested stakeholders be actively involved in the process so that the ultimate results meet the needs and interests of all parties and can be realistically complied with by issuers.

*   *   *

In conclusion, RILA and its members support the SEC's ongoing efforts to provide investors with all material information relevant to investment decision making, including climate risk-related information. Responding to the economic and moral imperatives of climate change requires thoughtful and meaningful action and we look forward to partnering with the SEC in the

development of material, transparent, consistent, reliable, and comparable climate risk disclosures.

If you have any questions or need any additional information, please contact Kathleen McGuigan, EVP & Deputy General Counsel at kathleen.mcguigan@rila.org / (202) 869-0106 or Erin Hiatt, VP Corporate Social Responsibility at erin.hiatt@rila.org / (202) 869-0283.

Sincerely,

Kathleen McGuigan
EVP & Deputy General Counsel
Retail Industry Leaders Association

Erin Hiatt
VP Corporate Social Responsibility
Retail Industry Leaders Association