UNITED AIRLINES HOLDINGS, INC.

June 11, 2021
The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: **United Airlines Comment Letter on Climate Change**

Dear Chair Gensler:

United Airlines Holdings, Inc. ("United") appreciates the opportunity to share its views with the Securities and Exchange Commission (the "SEC" or the "Commission") in response to a request for public input on climate change disclosures.[1] The SEC plays a critical role in ensuring investors have decision-useful information when making investment decisions, and we applaud the Commission for its ongoing efforts to address climate change matters. United supports reliance on existing climate change frameworks that are principles-based, industry focused, and grounded in existing materiality thresholds to ensure that investors have the consistent and comparable data they need to fully understand a company's material climate change risks and opportunities.

United is committed to sustainable travel as part of its long-term strategy and strives to minimize its environmental impact. United was the only airline globally listed on the Carbon Disclosure Project's 2020 Climate 'A List' for its strategy and actions to reduce environmental impact, marking the seventh consecutive year that United has led the U.S. airline industry in this assessment. We are continuously looking for ways to reduce our environmental footprint. United continues to work with strategic partners to purchase sustainable aviation fuel to reduce its emissions and provide energy diversification.

We believe a systematic streamlining of climate change disclosures that are industry-focused will provide investors with useful information, harmonize the overlapping reporting frameworks, and enhance certainty and clarity for public companies. United supports a flexible approach to climate change disclosure guided by business-specific materiality assessments. We believe furnishing such disclosures would strike the right balance between the need to provide decision-

[1] Allison Herren Lee, Public Statement on Public Input Welcomed on Climate Change Disclosures (March 15, 2021).

useful disclosures to investors and the cost of generating and validating such assessments and disclosures.

Existing Third-Party Frameworks and Industry-Based Standards. A unified framework for climate change disclosures would not have to be built by the Commission from the ground up. United encourages the SEC to rely on, and benefit from, the current private market reporting frameworks that apply industry-based standards. These frameworks provide a comprehensive and appropriate basis for the SEC to use in developing new disclosure requirements. The investor community — which the climate change disclosures intend to adequately inform — is particularly accustomed to disclosures adhering to these frameworks. Many companies already utilize these frameworks to communicate their climate change assessments, commitments, and performance. Prominent existing third-party frameworks provide a tested foundation reflecting years of evidence-based research and stakeholder engagement. Furthermore, these frameworks encourage decision-useful disclosures by allowing companies to choose the "off the shelf" metrics appropriate to their specific business operations and avoid the "one-size-fits-all" standard. With this flexibility, companies disclose information on their specific climate change risks and opportunities and omit disclosures that would not be relevant to their investors or material to their business and still report that they are in line with specific existing third-party frameworks.

Comply or Explain. We encourage the Commission to adopt a "comply or explain" regime on the basis of these frameworks. As the market is sufficiently incentivized to "comply" with climate change disclosures frameworks, an "explain" alternative would provide investors with essential decision-making information when companies decide not to disclose. By adopting a standardized framework, the SEC would ensure that investors receive the comparable and consistent disclosures appropriate for informative decision-making. Companies would be required to "comply" and provide disclosures applicable to their business and industry. If a given metric is not material to a company's business or its industry, the company should only be required to "explain" that metric's lack of relevance. Such a mechanism would result in the disclosures desired by investors, and the appropriate flexibility required for companies.

Material and Relevant Climate Change Information. We believe that even with a unified climate change disclosure framework, the SEC should continue to respect company-specific materiality determinations. "Materiality" assessments have unique significance in the case of climate change. Because the relationship between climate change and a specific business may differ significantly across and within industries, the usefulness of such information to investors depends on whether it is material and relevant to a particular business operation. Further, unlike many other disclosure items, some companies do not possess such information but rather need to create it. The production of such information may be costly and can therefore be justified only where material and relevant to a specific company. Providing companies with sufficient flexibility will allow them to adapt to the evolving climate change market and to accommodate the differences between industries and differences relating to focus, size, and stage of maturity. Such a non-rigid approach would also better reflect the Commission's long-standing commitment to a principles-based, registrant-specific approach to disclosure.

We also urge the Commission to remain consistent with its existing materiality standard as a threshold for considering new climate change disclosure principles. The materiality standards of existing frameworks may differ compared to the SEC's historical standards. Some frameworks determine materiality based on a sector and industrial level. The Commission, on the other hand, follows a business-specific approach to materiality. Under SEC Rule 405, the term "material," where used as a qualifier to provide disclosure, "limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security registered."[2] Similarly, the Financial Accounting Standards Board describes materiality — and the Commission relies on such description — with respect to an item as something that "if, in the light of surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced by the inclusion or correction of the item."[3] We believe any new disclosure rules should align with these existing SEC concepts of materiality.

<u>Furnished Rather Than Filed</u>. Given its nature, climate change disclosure requires projections, predictions, assumptions, and assessments. Maintaining a proper liability standard, coupled with company-specific materiality, will properly incentivize companies to produce such information where they have a reasonable basis. The liability standard imposed on information <u>filed</u> with the SEC is an inappropriate standard for such forward-looking and aspirational disclosures. We believe applying the liability standard applicable to information furnished rather than filed information strikes the right balance. It is only where the aspirational statement itself is materially misleading that the imposition of liability can be justified. Such a regime would enhance the current ecosystem in which companies get a platform to set their good-faith goals while providing a useful model of disclosing predictions and assessments to investors. As an alternative, the SEC could also provide a general liability safe harbor for disclosures made pursuant to a new climate change framework. Such a regime would also allow the Commission to protect investors, yet maintain fair, orderly, and efficient markets, without compromising the reliability of the disclosure.

<u>Timing and Location</u>. We encourage the SEC to provide companies with flexibility with respect to the timing and location of climate change disclosures. As mentioned above, companies will need to gather information on greenhouse gas emissions and climate change impacts, validate the data, assess the relationship between such data and the company's performance, consider the

[2] 17 CFR § 230.405. See also 17 CFR § 240.12b-2.
[3] SAB 99, 70 SEC Dock. 785 (1999).

historical data to make performance projections and, finally, review and revise the company's strategic plan in consideration of those projections. For nearly all companies, production of such climate change disclosures is a complex process, given the dependence on data external to the company and on advisors and consultants. In addition, the collection and verification of the appropriate data is a lengthy process that goes well beyond the end of a company's fiscal year and the annual report due date. Layering this verification process into the already busy timeline for a company's annual report on Form 10-K or annual meeting proxy statement adds unnecessary burdens on the disclosure process. We recommend providing flexibility with respect to the timing of the disclosure so long as the disclosure is provided on a consistent basis.

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United applauds the Commission for its ongoing efforts to address comparability of climate change disclosures, and we appreciate the opportunity to present our views. We support industry-based standards for climate change disclosures on a company-specific material basis that are furnished rather than filed, and respectfully request the SEC to provide companies with flexibility with respect to timing and location. United remains committed to working towards a sustainable and carbon-neutral future for the airline industry.

Respectfully submitted,

Robert S. Rivkin
Senior Vice President & General Counsel
UNITED AIRLINES HOLDINGS, INC.

cc: The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
John C. Coates, Acting Director, Division of Corporation Finance