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June 14, 2022

By Internet Submission

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

Re: *The Enhancement and Standardization of Climate-Related Disclosures for Investors (File No. S7-10-22)*

Dear Ms. Countryman:

United Parcel Service, Inc. (“UPS,” “our” or “we”) appreciates the opportunity to provide comments to the Securities and Exchange Commission (the “Commission”) regarding the Commission’s proposed rule relating to climate-related disclosures (the “Proposed Rules”). We support the Commission’s goal of providing consistent, comparable and reliable information regarding climate-related risks and metrics that are important to investors and the capital markets.

At UPS, we are committed to moving our world forward by delivering what matters. We are determined to continue our leadership in decarbonizing the transportation sector, and acknowledge our responsibilities to stakeholders for social and environmental stewardship and transparency. We also recognize that climate-related disclosures are becoming increasingly important to the investment community, and that Greenhouse Gas (“GHG”) emissions are a focus for many public, private and governmental organizations. UPS has a long history of providing climate-related disclosures, including 19 consecutive years of reporting under the Global Reporting Initiative Sustainability Reporting Standards (GRI), as well as reporting under the Task Force on Climate-related Financial Disclosures (TCFD), the CDP (formerly known as the Carbon Disclosure Project) and the Sustainability Accounting Standards Board (SASB) standards. UPS also includes information about its material climate-related risks in its filings with the Commission.

UPS has disclosed a climate-related sustainability goal of becoming carbon neutral by 2050 across Scope 1, 2 and 3 emissions in our global operations. To increase transparency, we have also publicly announced interim goals with respect to use of alternative fuels and renewable

electricity. We provide periodic updates on progress towards our goals in our various reports, and regularly engage with stakeholders on environmental matters.

Accordingly, we support increased climate-related disclosures through rulemaking that is appropriately designed to achieve the Commission's objectives of increased transparency and comparability. We believe that to be effective such requirements must provide investors with comprehensive reporting of the entirety of a company's GHG emissions, regardless of source. Only with disclosure of Scopes 1, 2 and 3 GHG emissions would the Commission consistently encourage transparency as well as allow investors to objectively assess companies' GHG emissions and emission reduction efforts. While we support meaningful and appropriate regulatory expansion of climate-related disclosure, we believe some adjustments to the Proposed Rules are both warranted and in the best interests of registrants, investors and the capital markets, and can be implemented while achieving the Commission's objectives.

As described below, we believe the potential benefits of disclosure, including meeting the Commission's objectives, can only be achieved if Scope 3 emissions disclosures are required for all issuers. While acknowledging the attendant increased costs, the benefits to be achieved outweigh such costs. Scope 3 disclosures are essential to achieve the Commission's goal of providing consistent and comparable information to investors, including providing an impartial basis for comparing peers and across industries. We also believe that the Commission should provide registrants increased flexibility in the disclosure of such information. We also would not object if the Commission determined that smaller reporting companies, or a similar, limited subset of registrants, should be exempt from this requirement on the basis of a disproportionate cost/benefit analysis.

Require All Registrants to Disclose Scope 3 Emissions

In our view, requiring Scope 3 emissions disclosures is essential for investors to be able to obtain a complete understanding of a registrant's GHG emissions and we generally agree with the requirements included in the Proposed Rules, but recommend they go further. We strongly recommend that the Commission adopt a requirement mandating that all registrants disclose Scope 1, 2 and 3 GHG emissions.

Requiring only certain registrants to disclose Scope 3 emissions would deprive investors of the ability to meaningfully compare data among registrants or across industries and create the possibility for significant confusion among such stakeholders. For example, if there are multiple registrants that compete or are otherwise in the same industry, notwithstanding the fact that such registrants may produce similar overall GHG emissions, differences within their corporate or business structures (including the amount of vertical integration, or decisions around asset-light/asset-heavy structures) could result in substantially different disclosures. As a result, the Proposed Rules, if adopted with the flexibility that would allow some registrants to omit Scope 3 emissions disclosures, could create an environment that furthers confusion or drives business policy decisions, rather than one that focuses on registrants' complete climate-related emissions and risk.

Mandating Scope 1 and 2 emissions disclosures, but not similarly requiring Scope 3 emissions disclosure, could also influence future registrant behavior. Companies could design operations in a manner that reduces Scope 1 or 2 emissions, and increases Scope 3 emissions, if they were able to avoid negative disclosure consequences. Alternatively, companies may avoid

adopting emissions reduction targets that include Scope 3 emissions. Such structuring efforts - to avoid disclosing emissions – would serve to further widen the comparability gaps between registrants.

UPS acknowledges that the data collection process and methodology for calculating Scope 3 emissions is challenging. However, the GHG protocol offers a consistent framework and Scope 3 emissions calculation methodologies exist outside of the availability of complete third-party data. Additionally, Scope 3 emissions are already being calculated and disclosed on a widescale basis across numerous industries, including the transportation sector. In fact, 15 U.S. transportation companies disclosed Scope 3 emissions in their 2021 CDP reports, with more companies outside of the U.S. reporting similar information.

Adopting the Scope 3 emissions disclosure requirement substantially as set forth in the Proposed Rules, and not mandating the disclosure of such emissions by all registrants, would be both fiscally and competitively disadvantageous for those companies subject to the disclosure requirements. Such companies would have higher compliance costs and would need more rigorous controls and procedures. Companies that did not disclose Scope 3 emissions would be rewarded with concomitant savings. In addition, the ability to proactively avoid disclosure by not adopting Scope 3 emissions reduction targets will likely have a “cooling” effect on such target adoption. In our view, progressing emissions reduction efforts is fostered by the adoption of climate related goals. Companies should not be rewarded for declining to commit to Scope 3 emissions reductions. Further, although the Proposed Rules require disclosure of material Scope 3 emissions, the lack of a threshold and clear guidance will undoubtedly lead to instances where significant Scope 3 emissions are not disclosed because a company determined they were not material.

We recommend that the Commission revise the Proposed Rules to require all registrants to disclose Scope 3 emissions, without regard to a materiality qualifier as described above. However, UPS understands that the Commission may want to provide a carveout in the Proposed Rules for smaller reporting companies on the basis of a disproportionate cost/benefit analysis. We also recommend that the Commission structure any exclusions from the disclosure obligations so as to minimize the number of registrants eligible to take advantage of any such exclusion from a Scope 3 disclosure obligation, and clearly define the exclusions, such as requiring an annual reevaluation; similar to the annual reevaluation required to maintain “smaller reporting company” status. If the Commission considers it appropriate to offer registrants further flexibility in complying with Scope 3 emissions disclosure, UPS recommends a one-year extension to the existing Scope 3 effective dates.

Should the Commission not deem it appropriate to include a complete mandate of disclosure of Scope 3 emissions in any final rules, we strongly urge the Commission to retain the Scope 3 disclosure requirement, as contained in the Proposed Rules, in its final rules.

Do Not Require Emissions Disclosures to be “Filed” with the Commission

As described above, we support the Proposed Rules’ requirement to mandate disclosure of GHG emissions, as this information could be appropriate and useful for investors. However, we believe that the implementation methodology contained in the Proposed Rules is flawed. Specifically, requiring GHG emissions disclosures in a registrant’s financial statements or elsewhere as part of information “filed” with the Commission would expose companies to

unnecessary and inappropriate potential liability and, for information required to be contained in financial statements, could significantly increase a registrant's compliance costs.¹ Instead, we believe the Commission's stated objectives can be accomplished in a more reasonable and appropriate manner. In order to address these concerns, we urge the Commission to provide registrants the flexibility to include required GHG emissions disclosure in sustainability or other reports made available on companies' websites, or otherwise in documents or information that is furnished but not filed with the Commission.

Disclosure of GHG emissions metrics in a registrant's financial statements, or elsewhere in periodic reports, filed with the Commission necessarily means that such disclosures will be within the scope of the principal executive officer and principal financial officer certifications accompanying those reports (the "Certifications") under Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 ("SOX"). The financial statements and Certifications carry liability risks under numerous statutes and regulations, including actions based in violations of the Securities Exchange Act of 1934 (the "Exchange Act").² Further, a company's financial statements are incorporated by reference into its future registration statements, which introduces potential liability under the Securities Act.³

GHG emissions and climate science are rapidly developing areas with still-emerging standards and best practices. Even if a registrant were to employ or retain experts on climate-related disclosures, given the lack of historical precedent, there will remain far less certainty in GHG emissions disclosures than in the rest of the financial statements, which are subject to robust auditing controls and standards that have been developed over decades. We believe it would be inconsistent with the purpose of the Certifications, which were adopted to provide assurance to the financial information of public companies, to expand their scope to include GHG emissions disclosures, a portion of which may be derived, but are ultimately distinct, from financial information.

Consider the 1987 Commission Concept Release in that sought comment about subjecting the contents of Management's Discussion and Analysis ("MD&A") under Item 303 of Regulation S-K to auditor attestation.⁴ After reviewing the comments received, the Commission declined to proceed with proposals to require auditor attestation on such information. This decision was due, in part, to the concern that the MD&A requirement was intended to help provide a narrative of financial results. While auditors were trained in financial reporting and verifying numbers contained in financial statements, they were less able to provide assurance regarding narrative explanations of results, trends, and uncertainties. We view the current scenario as similar. Given the number of subjective determinations that will be required in meeting the GHG emissions disclosure requirements if adopted substantially as contained in the

¹ Although the Proposed Rules do not require the attestation provider to be the company's auditor, given the extensive qualification and disclosure requirements that will apply to the attestation provider, as well as the potential liability under the Securities Act of 1933, it seems likely that many large companies will engage their auditor to provide the attestation.

² See, e.g., Section 10(b) of the Exchange Act; Exchange Act Rule 10b-5; Section 906 of SOX.

³ See, e.g., Section 11 of the Securities Act; Section 12(a)(2) of the Securities Act.

⁴ See Concept Release on Management's Discussion and Analysis of Financial Condition and Operations, Release No. 33-6711 (April 24, 1987).

Proposed Rules, such as determinations regarding what constitutes severe weather for a registrant and what comprises a registrant's efforts to reduce GHG emissions,⁵ as well as the still evolving nature of climate science, we believe it would not be appropriate to require an independent registered public accounting or other attestation firm to provide assurance of the type contemplated by the Proposed Rules.

As noted above, many companies will rely on third parties to provide data needed in the preparation of, and the analysis of determining the propriety of, GHG emissions disclosures. The concept of requiring disclosures based on data gathered from other third parties is intrinsic to the nature of Scope 3 emissions, and even the Commission acknowledges the potential uncertainties and the use of assumptions and estimates required for Scope 3 disclosures.⁶ As a result, we believe that while such information is useful and appropriate, subjecting registrants to potential liability of the nature associated with information filed with the Commission is inappropriate.

Registrants would be exposed to this liability despite management's inability to provide the types and nature of process oversight normally associated with filed information. As a result, senior officers would be required to provide Certifications relating to information over which they do not have the same control and oversight as information typically filed with the Commission. The same would hold true for a registrant's auditors if such information was required to be contained within a registrant's financial statements.

Further, an assurance requirement for GHG emissions disclosures will likely lead to a significant increase in fees paid to third-party experts due to the additional time and effort required to properly prepare, develop controls around, document and, when necessary, provide expert certifications with respect to GHG emissions disclosures. This cost and effort would likely be exacerbated by the need for such disclosures to be completed in a time and manner required for inclusion in a registrant's annual report on Form 10-K.

We note, by way of example only, the increase in audit fees resulting from the implementation of Section 404 of SOX ("SOX 404"). SOX 404 introduced, among other things, the requirement that public company auditors must attest to, and report on, management's assessment of the company's internal controls. The SOX 404 attestation was similarly outside the scope of the services auditors were then providing and introduced greater liability risk for auditors. Studies on the compliance cost of implementing SOX 404 generally showed that audit fees increased by a factor of between 50% and 73%, with some studies suggesting that audit fees had doubled.⁷ As described above, we believe the Commission's goals with respect to GHG emissions disclosures can be achieved in less costly manners. Thus, we believe the requirement for some or all of the proposed disclosures to be within the purview of Regulation S-X should be removed.

⁵ See Proposed Regulation S-X Rules 14-02(c) and (d).

⁶ See Proposing Release on The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release No. 33-11042 (April 11, 2022), at 208-209.

⁷ See Fischer, B., Gral, B. and Lehner, O.M., 2014, *Evaluating SOX Section 404: Costs, Benefits and Earnings Management*, 3 *Journal of Finance and Risk Perspectives* 43, 46-47 (Jan. 2014).

Regardless of the nature or type of Scope 3 disclosure requirement contained in any final rulemaking, we also strongly urge the Commission to expand the proposed safe harbor for Scope 3 emissions disclosures to automatically apply to companies that retain an independent third party meeting the attestation provider qualifications to prepare or assure their Scope 3 disclosures. Notwithstanding the increased costs, many companies will be completely dependent upon third parties in the preparation of their GHG emissions disclosures, meaning that many companies will need to make disclosures that are prepared by third parties based on data they gathered from other third parties. This is intrinsic to the nature of Scope 3 emissions, and given this and the Commission's own acknowledgement of the potential uncertainties and the use of assumptions and estimates required for Scope 3 disclosures,⁸ we believe that the retention of an independent third party meeting the attestation provider qualifications to prepare or assure Scope 3 disclosures should be considered a reasonable basis for making such disclosures and that the resulting disclosures should be considered to be made in good faith. We are concerned that without this expansion, the Scope 3 safe harbor does not go far enough to protect companies from liability for disclosures that are almost entirely outside of their control.

In addition, moving required GHG emissions disclosures outside of filings made with the Commission provides another opportunity for a level competitive playing field. In this way, other entities, such as U.S. government agencies, that compete with public companies could make disclosures in the same manner – providing for increased capital efficiency and stakeholder protections. Disclosure of GHG emissions of such other entities would give stakeholders an even more fulsome perspective of industry emissions and could foster further emissions disclosure and reduction efforts. For example, we believe the United States Post Office should be required to comply with any disclosure regime imposed on public companies that compete with it.

A more level playing field between public companies and private or governmental entities would help reduce or eliminate any drag upon capital formation; companies would not be incentivized to avoid registration with the Commission and avoid public offerings of securities. Failure to do this could fly in the face of the Commission's statutory mandate to facilitate and promote public capital markets. A limited disclosure requirement could provide a distinct competitive advantage for such entities, as the GHG emissions reporting process and resulting stakeholder engagement will be costly and time-intensive for public companies and could impact costs for consumers. Accordingly, we recommend that the Commission request that government agencies competing with public companies also be required to make similar GHG emissions disclosures in a similar manner – such as annual sustainability reports.

Other Concerns with the Proposed Rules

Finally, we note the legitimate concerns raised by other commenters regarding other aspects of the Proposed Rules, such as those concerning: the proposed amendments to Regulation S-X, including the amendments' overly burdensome disclosure thresholds that are inconsistent with existing accounting standards (*i.e.*, required disclosure based on a 1% threshold); the requirement to disclose the use of internal carbon pricing and scenario analysis, which is competitively disadvantageous to companies employing, and disincentivizes further

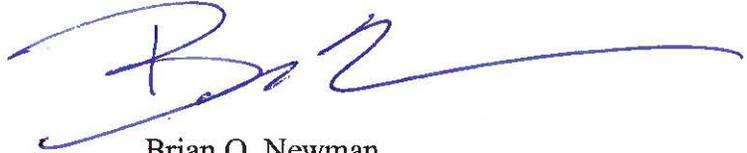
⁸ See Proposing Release on The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release No. 33-11042 (April 11, 2022), at 208-209.

adoption of, those tools; and the liability risk, including for GHG emissions disclosures and the designation of directors as having climate-risk expertise. While we do not discuss all of these points, we share these concerns. UPS urges the Commission to fully consider and address these comments in drafting any final rules. In particular, we believe that the Commission can accomplish its goals of greater disclosure without unduly introducing liability for disclosure resulting from evolving science that is outside the expertise of most company management and auditors. Many impacts of changing climate are not subject to precise measurement, and as such, it would be inappropriate to impose certification and audit requirements as if they were.

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Thank you, and we appreciate the Commission's consideration of our comments on the Proposed Rules.

Very truly yours,



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United Parcel Service, Inc.

cc: Carol B. Tomé, UPS Chief Executive Officer
Norman M. Brothers Jr., UPS Chief Legal and Compliance Officer
Laura Lane, UPS Chief Corporate Affairs Officer