

June 16, 2022

The Honorable Gary Gensler
Chairman
Securities and Exchange Commission
100 F Street NE
Washington DC 20549

RE: Comments on Securities and Exchange Commission (SEC) S7-10-22 – The Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Mr. Chairman,

On behalf of the American Apparel & Footwear Association (AAFA), I am submitting these comments in response to the Securities and Exchange Commission (SEC) proposal to require climate-related disclosures for investors.

Representing more than 1,000 world famous name brands, AAFA is the trusted public policy and political voice of the apparel and footwear industry, its management and shareholders, its three million U.S. workers, and its contribution of more than \$350 billion in annual U.S. retail sales. Our members are committed to traceability, transparency, and circularity to address the climate crisis.

[The latest Intergovernmental Panel on Climate Change \(IPCC\) report calls](#) on every industry sector to triple the speed of our transition to renewable energy to make real progress towards reducing emissions to adequately address the climate crisis.

Our industry is responding, and the thousands of brands and organizations we represent are committed to Environmental, Social, and Governance (ESG) goals and working pre-competitively to achieve the highest ethical and responsible standards across our global supply chain and production practices. We continue to transform our industry from the inside out to ensure we are meeting our climate targets and sustainability and governance goals in a responsible and productive manner.

AAFA members support actions to measure and report emission reduction targets and the inclusion of data points that are measurable, quantifiable, widely reported, and widely used. Our industry has engaged in and remains fully committed to enhancing sustainability and social responsibility within the apparel, accessories, and footwear industry's supply chains.

AAFA and our members were involved in the development of the Science Based Target Initiative (SBTi) to assist in meeting our industry's climate goals, and many of our members participate in the Value Reporting Foundation's Sustainability Accounting Standards Board (SASB), which is a voluntary approach to setting and meeting emission reduction goals. Our focus is to ensure we are doing our part to address the climate crisis.

The industry views reducing carbon emissions as a pre-competitive issue (i.e., not an area where we want to compete) that lends itself naturally to collaboration and capacity-sharing. Together, we are

focused on mitigating climate impacts to protect humankind. As with anything, there are some companies that are further along than others – but this is why it is so important to view climate change pre-competitively and for any final rule to provide a clear, centralized approach that reduces complexity and costs to compliance.

AAFA strongly supports the goal of the SEC proposal – to provide a clear framework that would allow companies to coalesce around a single approach. But we have a few key concerns that we believe must be addressed to make any final ruling as effective as possible.

The SEC rule should limit disclosure to material risks.

The proposed rule would require a registrant to disclose whether any climate-related risk is reasonably likely to have a material impact on a registrant, including its business or consolidated financial statements, which may manifest over the short, medium, and long term.

Materiality of climate-related risks should be determined in totality to a company vs line item by line item and business by business.

The focus should be on a qualitative discussion of climate-related risks including governance, strategy, and risk management with inclusion of metrics, targets, and financial impacts only if relevant to understanding and management of material climate-related risks. Requiring extensive information to be filed instead of furnished also requires companies to dedicate substantial resources and processes for information that may not be material for investors' understanding of significant risks. While material information can and should be incorporated into filings, information that is not material is more appropriately included separately, such as in a corporate social responsibility report.

The 1% line item disclosure requirement and requirement to disclose impact of any and all weather-related events should be eliminated. The 1% threshold is not consistent with longstanding concepts of materiality, would require immense amounts of work and expense (e.g., companies would have to monitor, track, and make financial assumption about a wide variety of non-material items to determine if the 1% threshold had been met). It should be replaced with a “financially material” standard. Similarly, the definition of “materiality” for Scope 3 emissions should be amended to account for materiality to overall emissions.

Information that is not material should not be required to be filed under this ruling. For example, certain information is permitted to be disclosed on the Company's website under existing rules. The same approach could be taken for climate information that is not material. We have concerns about the proposed requirement for companies to produce audited financial statements that include new climate-related footnote disclosures at a 1% of line-item threshold. We support revisions to the rules that would replace this threshold with a “financially material” threshold while still requiring that companies provide relevant, material climate-related information to investors.

The proposed rule should offer clear, prescriptive guidance.

We would like to see clear, prescriptive guidance on the rules requiring companies to 1) quantify and describe the effects of climate-related events and transition activities and 2) disclose the impacts of these events and activities on estimates and assumptions used in preparing financial statements to the extent financially material.

We appreciate the SEC acknowledging that companies may set longer term goals without having full knowledge of the path to getting there. This is particularly important for Scope 3, which will take significant effort in mass and across countries to achieve. Setting a goal with the ability to acknowledge unknowns is preferred over not setting any goal at all.

We also appreciate that the SEC recognizes that disclosure of climate-related targets or goals should not be construed as promises or guarantees, and want to ensure this principle is retained.

We generally support the annual disclosure of Scope 1, Scope 2 and Scope 3 greenhouse gas emissions, but we have some concerns with aspects of the proposal.

While we recognize the challenges and barriers to accurately measuring Scope 3 emissions, they are too important to ignore. We expect that including Scope 3 emissions in required SEC disclosures will lead to improvements and harmonization in data collection and accounting methodologies that can reduce these challenges and barriers over time and further support our shared goal.

However, in regards to timing of the disclosures and given the heavy reliance on third party data for calculation of greenhouse gas emissions, we are requesting that disclosure for Scopes 1 and 2 emissions are given an additional 1-3 years to comply, given that the majority of companies in our industry will need to staff up in order to have the needed expertise in this space, develop and implement new systems, and in many cases obtain outside assistance (which is likely to be in higher demand were the proposal to take effect) to ensure reliability and comparability of the information.

In addition, Scope 1 and 2 emission disclosures should be provided (furnished, not filed) within 6 months of the publishing of the 10-K in a separate document and scope 3 to be provided (furnished, not filed) within 6 months of the public release of information from Carbon Disclosure Project (CDP). Today, CDP releases the information provided to them by companies in September. This information covers the prior calendar year. Thus, with CDP as a primary source of Scope 3 data, such data would not be widely available until approximately 9-12 months after the end of each calendar year and on a calendar year as opposed to fiscal basis.

Additionally, Scope 3 data is calculated using available emissions factors, but clear and universally adopted methodologies don't exist for every category. The lack of consistent calculation methodologies means that scope 3 data between peer companies would not be consistent, reliable, or comparable. Furthermore, the nature of companies' scope 3 emissions means that we would be asking our suppliers for the emissions from *their* tier 1 and tier 2 suppliers. At a certain point the data is no longer reliable and, if required, would not be useful for investors.

Lastly, because materiality is dynamic, we may see investors increase their demands around scope 3 data to include categories that we don't currently disclose data for like end of life treatment of sold

products. If these categories are considered financially material, we would be expected to disclose information for these categories where there is no accepted calculation method and would require significant time and resource investments. We would need to further assess the materiality of the scope 3 emissions in the value chain, and accordingly, increase the breadth of our scope 3 emissions disclosures to align with our findings of material impact

Therefore, disclosure of Scope 3 emissions and targets should be delayed until reporting of Scopes 1 and 2 greenhouse gas emissions is more widespread and thus Scope 3 emission calculations are less assumptions-based. Required disclosure prior to this is likely to cause investor confusion given the wide range of possible assumptions and no consistent, widely recognized methodology for making such calculations. A delay would allow more concrete data and the development of standardized methodologies.

Since disclosure of Scope 3 emissions are dependent on reporting by third party companies and often rely on vendors from outside the United States who are not subject to these rules, we propose that Scope 3 reporting be delayed for more than 18 months beyond Scope 1 and 2 emissions.

Companies in our industry are working pre-competitively to align methodologies for measuring scope 3 emissions.

The proposed rule should capture information in a standalone document, and not filed through a company's Form 10-k.

The proposed rule would require a registrant to include climate-related disclosure in Securities Act or Exchange Act registration statements through Forms 10-k. We recommend allowing the information to be "furnished" in a stand-alone document rather than "filed" through a company's Form 10-K, thereby providing a safe harbor from liability for the disclosure and allowing extra time for disclosures.

The proposed rule should require information to be furnished, not filed.

The proposed rule would require climate-related disclosures as "filed" and therefore subject to potential liability under Exchange Act Section 18, 707 except for disclosures furnished on Form 6-K. We want corporate efforts to 'naturally spin out the information that is required' to be more sustainable - Even if the Staff determines to require information that is not material in SEC filings, as opposed to on Company websites, information should only be furnished and not filed if it isn't required under existing disclosure and financial rules.

If this is not possible, then we are requesting a gradual phased in approach of 3-5 years from furnished to file to give companies adequate time to obtain the relevant expertise, develop and implement the necessary systems, and for the development of accepted methodologies.

The proposed rule should have an adequate safe harbor.

The proposed rule includes safe harbors related to the Private Securities Litigation Reform Act ("PSLRA"). We believe the proposed safe harbor is inadequate. Moving to a furnished not filed

requirement would help as well as requiring the broadest possible safe harbor given uncertainties around science, lack of materiality of much of the information in the proposed rule, reliance on third party and outside sources for information, and a lack of a standardized approach to reporting.

The proposed rule should rely on prospective data versus historical data.

The proposed rule would also require disclosure to be provided for the registrant's most recently completed fiscal year and for the historical fiscal year(s) included in the registrant's consolidated financial statements in the applicable filing. Given the limitations of historical data, and the fact that many companies have not previously collected much of the data required in the proposal, reporting should only be prospective for the first year after implementation. Historical data can be applied back to that year and thereafter.

The proposed rule should not require attestation of Scope 1 and Scope 2 emissions through item 1505.

The proposal says an accelerated filer or a large accelerated filer would be able to obtain any level of assurance over its climate-related disclosures that are not required to be assured pursuant to proposed Item 1505(a). For example, an accelerated filer or a large, accelerated filer could voluntarily include an attestation report at the limited assurance level for its GHG intensity metrics or its Scope 3 emissions disclosure. However, the voluntary assurance obtained by such filer would be required to follow the requirements of proposed Item 1505(b)–(d), including using the same attestation standard as the required assurance over Scope 1 and Scope 2. Item 1505 should not require attestation of Scope 1 and Scope 2 emissions. Given uncertainties around science, possible lack of materiality for this information, reliance on third party and outside sources for information, lack of a standardized approach to reporting, lack of trained auditors, as well as timing issues, attestation is impractical, costly, and unnecessary.

End goal should be practical, and not increase unnecessary costs.

Our industry supports the goal to require companies to disclose scope 1, 2, and even scope 3 emissions. However, we are concerned that the proposal, as written, would add considerable costs, would impose impossible hurdles to submit accurate information in certain cases, at least initially, and would create significant confusion among investors, versus the clarity on our climate impacts and efforts to mitigate climate change that is the stated purpose of the proposal. Indeed, a considerable amount of resources would be shifted from mitigation, reduction and adaptation to compliance with novel, untested, and extremely detailed requirements.

In conclusion, the American Apparel & Footwear Association and the members we represent acknowledge the importance of tracking and reducing greenhouse gas emissions and we appreciate the consistency that the proposed SEC ruling is trying to promote. However, we are acutely worried about the proposal's lack of specificity on details for achieving and meeting these disclosure goals, the substantial increase in costs that would be imposed by the proposal, numerous aspects of the proposal that ignore traditional concepts of materiality, and the proposal's unworkable timelines.

We look forward to working with the SEC to address these concerns and make the proposed ruling as effective as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Lamar". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Stephen Lamar

President & CEO