Jade C. West
Chief Government Relations Officer

VIA EMAIL

June 16, 2022

Vanessa A. Countryman
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
(rule-comments@sec.gov)

Re: Comments of the National Association of Wholesaler-Distributors on the Proposed Rule "The Enhancement and Standardization of Climate-Related Disclosures for Investors," SEC File No. S7-10-22.

Dear Ms. Countryman:

The National Association of Wholesaler-Distributors ("NAW") respectfully submits these comments on the Commission's proposed rule, "The Enhancement and Standardization of Climate-Related Disclosures for Investors."[1]

NAW is the only trade association representing the entire wholesale distribution industry. NAW is both a traditional trade association with several hundred direct member companies, and a federation of more than 65 line-of-trade associations. Distribution is a business-to-business industry: distributors purchase inventory, generally from manufacturers, and sell it to their customers, generally retailers. Distributors buy inventory in large quantities, warehouse it, break it down into the quantities their customers want (called "breaking bulk"), and ship to those customers. Distinct from warehouse logistics companies, which move someone else's product from seller to buyer, distributors purchase their inventory, take title to it, then re-sell it to customers.

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[1] 87 Fed. Reg. 21,334 (April 11, 2022).

Wholesaler-distributors play a crucial role in our nation's economy. Distribution is a $7.5 trillion industry, contributing roughly a third of the GDP.[2] Distribution employs approximately 6 million workers and the average non-supervisory hourly wage is more than $29.00.[3] Distribution pays one of the highest effective income tax rates of all industries. Although the data varies among the distributors of different product lines, a significant number of wholesaler-distributors report after-tax profit margins of less than 1%, with the average margin about 2%. Added costs imposed by government regulators or Congress, like those accompanying the proposed rule, cannot easily be absorbed by wholesaler-distributors. And because the overwhelming majority of the costs of doing business are labor-related, those added costs must be offset by either cutting labor costs—jobs—or by passing those costs along to customers, fueling inflation.

The majority of wholesaler-distributors are small- to mid-sized private companies, and except for the largest companies, few distributors have recognized name brands like the manufacturers and retailers which are their supply chain partners.[4] Because of this, distribution's role in the supply chain is often underestimated and underappreciated, but it is essential to moving products either to manufacturers in raw materials or—more predominantly—from manufacturers to their re-seller customers.

The proposed rule's disclosure requirements, if finalized, will impact the entire wholesale distribution industry, which plays a critical role in the supply chain. To help the Commission understand the impact of its proposed rule on our critical industry, this letter will: (1) provide a summary of our members' dedication to addressing climate change, (2) explain to the Commission how the proposed rule will negatively impact the economy, particularly in relation to private companies, and (3) suggest ways the Commission could improve the final rule.

I. Wholesaler-Distributors are Working to Reduce Their Carbon Footprints.

Distributors are taking important steps to protect our environment. They are disclosing greenhouse gas emissions, publicly setting emission reduction targets, and, in some instances, meeting those targets early. Many work with established environmental programs to reduce their carbon footprint and promote efficiency and transparency in their environmental impact

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[2] U.S. Census Bureau, Monthly Wholesale Trade: Sales and Inventories, April 2022 (June 8, 2022), https://www.census.gov/wholesale/pdf/mwts/currentwhl.pdf.

[3] U.S. Bureau of Labor Statistics, Wholesale Trade: NAICS 42 (June 10, 2022), https://www.bls.gov/iag/tgs/iag42.htm.

[4] Our members represent a variety of business structures: members' sales volumes range from $10 million to more than $1 billion, employee numbers range from under 50 to more than 5,000, many operate regionally while some operate country wide.

and practices. For instance, some partner and disclose information with CDP, align with the UN 2030 Sustainable Development Goals, are Energy Star Partners, have committed to the Race to Zero, and also issue individual company sustainability reports to inform investors and consumers about their environmental footprint.

In addition to these disclosure measures and carbon reduction goals, distributors, through innovation and technology, are implementing a variety of environmentally friendly practices. Industry members are striving to protect the land, water, and air by adhering to high standards for transportation, product distribution, and storage. For example, wholesaler-distributors are developing efficient delivery routing systems and removing suppliers' less-than-truckload orders from the road, which reduces fuel consumption and reduces unnecessary carbon emissions. Industry members are also upgrading their facilities with new, energy-efficient technology to reduce water, power, paper, and fuel consumption. For one member, facility upgrades alone produced a 32% decrease in energy usage on a per-square-foot basis as of 2018, saved more than $19.25 million, and reduced energy consumption by more than 171 million kilowatt hours since 2006. Industry members are also committed to reducing waste and landfill contribution by implementing comprehensive recycling programs and donating food and products to those in need.

Finally, NAW believes that sustainability is a mission everyone shares. To that end, members are assisting others (specifically customers and supply chain partners) in meeting their environmental goals. Industry members are developing and offering energy saving, environmentally preferable products and counseling customers on ways to make their business operations more efficient and environmentally friendly.

II. The Commission Should Consider the Unintended Economic Consequences that Would Flow if the Proposed Rule Were Finalized.

The Commission has a statutory obligation to consider the economic implications of the proposed rule not only upon investors and registrants, but the public at large. Specifically, the Securities Act requires the Commission to consider "whether the [rule] will promote efficiency, competition, and capital formation."[5] This means that the Commission must "determine as best it can the economic implications of the rule."[6] To fully evaluate the economic implications of the proposed rule, the Commission must consider the Scope 3 disclosure requirement's impact on private companies, the competitive disadvantage of public companies to comply with the rule, and the implications on private companies' access to capital.

[5] 15 U.S.C. § 78c(f); *accord id.* §§ 78w(a)(2), 80a-2(c).

[6] *Chamber of Commerce of the United States of America v. SEC*, 412 F.3d 133, 143 (D.C. Cir. 2005); *see Business Roundtable v. SEC*, 647 F.3d 1144, 1148-49 (D.C. Cir. 2011); *American Equity Investment v. SEC*, 613 F.3d 166, 177-79 (D.C. Cir. 2010).

A. The Commission Should Consider the Economic Impact of the Proposed Rule's Scope 3 Disclosure Requirements on Private Companies.

The proposed rule's economic analysis notably does not list private companies as "affected parties" nor does it discuss the related economic implications of the rule's effect on private companies.[7] In taking this narrow view of the economic impacts of the proposed rule, the Commission fails to consider that the proposed rule, if finalized, will irreparably harm many private wholesale distribution companies, which will exacerbate the supply chain disruptions our country is experiencing.

The overwhelming majority of NAW members—and of businesses in the country overall—are privately held companies, not publicly traded corporations. Even though privately held companies would not be required to directly comply with the proposed rule, they nevertheless will be indirectly impacted if they are supply chain partners with public companies, as most distributors are. In a survey of NAW members, more than 88 percent of the privately held companies that responded report that they buy from or sell to public companies. An economic analysis that fails to consider the rule's impact on these private companies fails to fully evaluate the economic implications of the rule.

More specifically, the proposed rule fails to account for the impact of Scope 3 emissions reporting requirements on private companies. Scope 3 emissions are those that come from across a registrant's value chain, including emissions associated with the products and services it sells to and purchases from other companies. To comply with the proposed rule's Scope 3 reporting obligations, public companies will inevitably ask private companies that they sell to or buy from to calculate and disclose information that the public companies would need to fulfil their Scope 3 reporting obligations—including GHG emissions "disaggregated by each constituent greenhouse gas," "waste generated in a registrant's operations," "fuel consumed by its third-party transporters and distributors of those goods and services and of its sold product," business travel and/or commuting by their employees. Many will include the reporting on these topics in contractual provisions. Providing this information will be extremely costly and will inevitably harm private companies' financial outlook.

[7] 87 Fed. Reg. 21,334, 21,413.

Many small- and mid-sized private companies will not have in-house capabilities to perform these required assessments. Indeed, in our survey, almost 95 percent of respondents report that they do not have the staff or other resources to comply with such disclosure demands. Accordingly, outsourcing would be necessary if companies want to maintain favorable distributor relationships with public companies. In addition, there will be substantial costs to renegotiate contracts with public companies, which would likely include indemnification provisions for misstatements about carbon emissions, further increasing private companies' potential liability costs. Companies that do not have the resources to comply with these demands will very likely lose business to larger competitors.

Although there are certainly benefits of broader, standardized climate disclosure, these benefits must be accurately weighed against the costs to comply with the proposed rule and the rule's overall impact on the economy. Because the Commission fails to adequately consider these costs and impacts, particularly on private wholesaler-distributors, further engagement is required.

B. The Commission Should Consider Whether the Proposed Rule Will Competitively Disadvantage Public Companies.

Although the Commission cannot ignore the costs to private companies if the rule is finalized in its current form, the even higher costs the proposed rule imposes on public companies should also be more heavily considered in the Commission's economic analysis. As a result of the grueling disclosure requirements in the proposed rule, the Commission could well put public companies at a competitive disadvantage with their privately held competitors (that would only be indirectly impacted by the rule).

By the Commission's own estimates, the rule will cost public companies over $10.2 billion in compliance costs.[8] The vast majority of those costs are unrelated to the Scope 3 emissions reporting issues noted above and will not be borne equally by private and public companies that compete in the same space.

The burden imposed upon public companies will thus injure those public companies compared to their privately held competitors. That will have the effect, at the margin, of encouraging public companies to go private in order to avoid the costs imposed by the proposed rule, thus discouraging public capital formation. It also would have the effect of deterring privately held companies from going public and taking advantage of access to the public capital markets—thus deterring public capital formation.

[8] 87 Fed. Reg. at 21,461.

C. The Commission Should Consider Whether the Proposed Rule Will Negatively Impact Private Companies' Access to Capital.

Further, publicly traded lenders and investors will be less likely to interact with smaller private companies out of concern for data compliance if the Commission were to finalize the Scope 3 emissions reporting requirements. As noted above, Scope 3 emissions are those that occur in a company's value chain but are generated from sources that are not owned or controlled by the company. This would presumably include emissions generated by a private company who receives funding from publicly traded companies, such as banks, lenders, and even public companies who enter into joint ventures with private companies.

As noted above, many private companies are smaller businesses that lack the resources and infrastructure to collect and report information as complex as the emissions calculations contemplated by the proposal. As such, public companies will be less willing to interact with those companies due to compliance concerns.

III. The Commission Should Further Limit the Proposed Rule's Required Scope 3 Disclosures.

The Commission should take measures, as suggested by other commenters, to reduce the compliance costs of the proposed rule. These costs will inevitably be pushed out to other companies in the supply chain, which will ultimately harm laborers and consumers.

In addition to taking these cost-savings measures, the Commission should only require Scope 3 emissions reporting, which will greatly affect non-regulated private companies, on a voluntary basis. Even though the proposed rule includes some limits on the required reporting of Scope 3 emissions—like the materiality and target-setting thresholds—these limits are not enough.

The proposed rule's discussion of Scope 3 reporting shows that the Commission interprets materiality broadly, which will increase the economic impact of the rule on those private companies in upstream and downstream relationships with reporting companies. To reduce the unintended consequence of the proposed rule to the wholesale distribution industry, the Commission should revisit this disclosure requirement.

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For the reasons stated above, we respectfully request that the Commission revise the proposed rule to mitigate the unintended economic consequences of the rule, particularly to private companies that play a vital role in our economy.

Sincerely,

Jade West

Jade West
Chief Government Relations Officer