HDA
Healthcare Distribution Alliance

PATIENTS MOVE US.

June 16, 2022

Honorable Gary Gensler, Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: **<u>Healthcare Distribution Alliance's Comment in response to The Enhancement and Standardization of Climate-Related Disclosures for Investors, File No. S7-10-22</u>**

Dear Chairman Gensler:

The Healthcare Distribution Alliance (HDA) provides this comment on the proposed Climate-Related Disclosures rule, entitled *Enhancement and Standardization of Climate-Related Disclosures for Investors*, 87 Fed. Reg. 21334 (April 11, 2022) ("Proposal"). HDA represents primary pharmaceutical distributors – the vital link between the nation's pharmaceutical manufacturers and more than 200,000 pharmacies, hospitals, long-term care facilities, clinics, and others nationwide. Since 1876, HDA has helped its members navigate regulations and innovations to get the right medical products to the right patients at the right time, safely and efficiently. Although our members' predominant focus is the wholesale distribution of pharmaceuticals, many of HDA's members also distribute medical supplies and medical devices to the hospitals, clinics, and other healthcare providers they serve.

HDA members serve as the central link in a sophisticated national supply chain, supporting manufacturers, healthcare providers, and the government in ongoing efforts to ensure the safe and efficient movement of pharmaceuticals, supplies and devices across a highly interconnected web across the United States while providing great savings to the healthcare system.

The industry is highly dependent on the country's transportation infrastructure, shipping its products by rail, truck, auto, and air, all of which impact greenhouse gas emissions. Many HDA distributors have undertaken widespread efforts to reduce greenhouse gas emissions from delivery efficiencies and reducing and enhancing transportation routes, which include centralizing, aggregating, and shifting deliveries in collaboration with partners.[1] However, while the entire delivery system is highly integrated, our member companies function within the system in very different ways. Important differences in the business models of our members affect their own greenhouse gas emissions, but, as an industry, do not change the industry's overall impact. For example, some of our members service areas regionally. Some own their own transportation networks, while others rely on public service carriers. Some are

[1] See HDA Blog, *World Health Day: HDA's Commitment to a More Sustainable, Resilient Supply Chain*, available at: https://www.hda.org/news/hda-blog/2022/04/06/09/19/world-health-day-hdas-commitment-to-a-more-sustainable-resilient-supply-chain?rtb=1

integrated across service lines, while others service niche markets. Some are large public multinational companies while others are privately owned.

The HDA generally supports a climate-related disclosure rule to the extent it provides a level playing field for all reporting entities and the increased reporting burden provides actionable data. If the burden does not add actionable data, the rule may act as an unintentional impediment to the effort. The more detailed rule that the SEC has proposed – as opposed to the existing *materiality only* standard – will reduce uncertainty about what to report and under which frameworks. HDA members are diverse in size and include public and private companies. Several members have already committed to transition to a net carbon neutral economy and are disclosing climate-related risks but are using a number of different protocols to identify and quantify them and reporting them in different ways, primarily in sustainability reports. The standardization of reporting is welcome.

However, we believe some caution is warranted. Comparability among reporters is a stated, underlying rationale for this rule. As noted above, members have remarkably different methods of transporting or contracting for transporting their products, and transportation can thus fit into Scope 1 emissions for some companies or Scope 3 (or both) emissions for others, depending on the chosen business model.

Business models may differ, but collectively, the industry will have the same significant impact. The SEC's climate-related disclosure proposal will not modify the overall emissions impact nor allow investors to compare different distribution companies in this regard, primarily because analytic tools like the *GHG Protocol standards* or *Task Force on Climate-Related Financial Disclosures* (TCFD) recommendations cannot be modified into a one-size-fits-all regulatory requirement.

For these reasons, the HDA supports a more industry-focused approach, particularly when it comes to the reporting of Scope 3 emissions. The Scope 3 emissions of one company are the direct emissions of another and, in the complex web of healthcare, the amount of effort, both in time and personnel resources, to capture Scope 3 emissions outweighs the benefit of a one-size-fits-all approach to emission reporting. Care must be taken to narrowly tailor the Proposal by considering the unique features of the healthcare distribution sector and the burdensome impacts on smaller, private companies.

I. The Proposal should allow Registrants to "Furnish" rather than "File" Climate-Related Metrics.

The HDA suggests that the proposal should allow all registrants to "furnish" rather than "file" the climate-change related metric and, at the same time, should extend the compliance deadlines, allowing registrants more time to implement sector-specific protocols. This approach will result in better disclosures and less risk to investors and registrants alike. We believe climate change disclosures are best determined in collaboration between registrants and investors, and should be flexible, sector-specific, and principles-based as opposed to a rules-based, one-size-fits-all approach. Such an approach will allow for more effective and enhanced safe harbor provisions. Climate change data and disclosure are inherently uncertain—particularly scenario-based data and forward-looking models using long time horizons. Therefore, a safe harbor is necessary and would allow, as well as encourage, companies to provide more robust information without unnecessarily exposing them to liability as the models and scenarios change over time. The "filing" approach appears to penalize registrants that have taken early leadership roles in disclosing climate-related information to investors and attaching liability to those statements without a safe harbor is ill-advised. Furnishing climate-related information can be done with citations and links to sustainability reports and will provide investors who wish to review the data with more detailed and company specific information than the one-size-fits-all approach taken in the proposed rule.

The Proposal selects one calculation and disclosure framework. By favoring one approach over all others, the SEC Proposal may pose additional burdens on those companies that have proactively been gathering and disclosing data using different protocols. Because the choice of a protocol is generally tied to the availability of data and business-specific risks, the Proposal may lead to uneven results and will increase costs as companies adjust to a new requirement.

Moreover, mandating that climate reporting align with how a company sets its boundaries for financial reporting will create undue burden for many companies. The SEC proposal removes flexibilities that are built into the GHG Protocol and TCFD, the two protocols that the SEC references most often. In addition to the Scope 3 issues discussed below, existing protocols adopted by registrants over the past decade or more allow flexibility in the choice of boundaries for GHG evaluations. While we recognize the jurisdictional issues that the SEC has may affect the way that the SEC drafts a rule, simply throwing out years of existing practice for the sake of a blanket rule about boundaries creates significant burden on registrants.

II. The HDA is Committed to Industry-Specific Progress on Climate-Change but Needs Time to Implement the Sector-Specific Results and Other Industry-Related Requirements.

HDA supports establishing sector-wide reporting schemes and is participating in industry groups to achieve a better understanding of and address health system climate change risks and emissions. However, more time is needed to implement a sector-based approach to emission reporting. The HDA asks the SEC to understand that, as corporate America's experience with climate disclosures matures, the nature and breadth of rules may also evolve and coalesce around more uniform standards.

Climate-related risks faced by companies are not the same across all sectors, and the materiality of different risks across various industries require disclosures specific to individual industries. To properly help investors understand the physical and transition climate-related risks faced by different industries and the resilience of strategic plans to respond to, and manage, these risks, a framework should have mandatory disclosure standards that identify common material drivers of risk and value unique to a given industry.

The National Academy of Medicine ("NAM") launched the Action Collaborative on Decarbonizing the U.S. Healthcare Sector ("Climate Collaborative") in September 2021. This is a public-private partnership of leaders from across the health system committed to addressing the sector's environmental impact while strengthening its sustainability and resilience. HDA joined the NAM Climate Collaborative as a steering committee member and its CEO, Chip "Chester" Davis, Jr., co-chairs the Supply Chain work group.

Notably, the health sector is responsible for approximately 8.5% of U.S. carbon emissions. The Climate Collaborative will focus its work on health care supply chain and infrastructure; health care delivery; health professional education and communication; and policy, financing, and metrics.

One of the Climate Collaborative's areas of focus is reducing Scope 3 emissions, including developing sustainability metrics and indicators for industry and health systems, along with shared plans for public reporting.

The healthcare distribution industry is highly regulated and is also currently facing other major regulatory changes. Congress enacted the Drug Quality and Security Act (DQSA) on November 27, 2013. Title II of the DQSA, the Drug Supply Chain Security Act (DSCSA), outlines steps to build an electronic, interoperable system to identify and trace certain prescription drugs through the pharmaceutical distribution supply chain in the United States (U.S.). This law provides a federal traceability solution for prescription medicines, which by 2023, will lead to the establishment of electronic, unit-level traceability requirements across the entire U.S. supply chain for prescription drug products. Indeed, the U.S. Food and Drug Administration published a proposed rule earlier this year (2022) which sets national standards for the licensing of prescription drug wholesale distributors (WDDs) and third-party logistics providers (3PLs).[2] The proposed rule is meant to strengthen U.S. drug supply chain security and will have significant impacts on WDDs' and 3PLs' business operations. DSCSA implementation is perhaps the most complex undertaking the U.S. distribution supply chain has ever faced, to be fully implemented by fall of 2023. We raise this priority as yet another reason the SEC should consider, as HDA asserts, that a more robust transition period is needed to implement the SEC's Proposal while also coordinating compliance with various industry initiatives.

Members of the HDA will benefit from and be able to use the results of the Climate Collaborative's joint efforts to develop sector-specific plans for public reporting of Scope 3 emissions. HDA asks that the SEC provide the time and flexibility for it to do so. HDA recommends allowing an additional three years for compliance with the Scope 3 emissions disclosures. Of course, to the extent that members are already reporting Scope 3 emissions, they will continue to do so. HDA requests additional time for its members to evaluate the frameworks and standards, gather data, and coalesce around a uniform, relevant, and informative method of disclosing Scope 3 emissions for investors and phase in those more sophisticated assessments over time.

III. Methods Required to Calculate Scope 3 Emissions are Inherently Uncertain. Consequently, Disclosure of Scope 3 Emissions Should Always be Accompanied by a Stated Business Reason.

The Proposal should be revised to tie the disclosure of Scope 3 emissions to a business purpose. The GHG Protocol standards specifically state that use of the Scope 3 Standard is not intended to provide a basis for comparing different companies based on their Scope 3 emissions.[3] Instead Scope 3 emission tracking is intended to enable the company to track its own progress over time, develop strategies, and minimize risks.[4] While most companies have been tracking Scope 1 and 2 emissions, Scope 3 emissions require significant investments in time and strategic analysis to yield useful information.

The SEC's proposal requires Scope 3 emissions to be reported "if material" based on Scope 3 calculations. According to the proposed rule language, registrants must *first* calculate Scope 3 emissions before evaluating whether they are material, to determine whether to report the Scope 3 emissions data. The phrasing of this rule is contrary to the GHG Protocol itself which requires the identification of activities that pose risks and *then* the calculation of Scope 3 emissions. Scope 3

---

[2] *National Standards for the Licensure of Wholesale Drug Distributors and Third-Party Logistics Provider*s, 87 Fed. Reg. 6708 (Feb. 4, 2022) (public comments ended June 6, 2022).

[3] Scope 3 Standard, p. 9.

[4] *Id*.

emissions should be calculated and disclosed *for the activity that poses the material risk*, not *all* Scope 3 emissions. The proposal language is not clear and should be modified to tie Scope 3 "materiality" to business risk and strategy disclosures. Streamlining disclosures in this way would provide additional certainty and minimize the reporting burden for smaller private companies that do not identify Scope 3 emissions as a material business risk.

IV. The SEC's Scope 3 Requirements Indirectly Impose Obligations on Private Companies, and the Proposal's Costly and Burdensome Requirements are Insufficiently Supported.

The Scope 3 emission disclosure requirement, if adopted, will have a significant impact on private companies and foreign companies not subject to the regulation. Many of these companies are suppliers to or have received loans or investments from public companies subject to the rule.
One way for a public company to account for Scope 3 emissions is to require its upstream (e.g. materials sourcing, materials processing, supplier activities) and downstream vendors (e.g. transportation and distribution, processing of sold products, end of life treatment of sold products) to disclose their Scope 1 and 2 emissions directly to it, and, in the healthcare distribution industry, many do require such disclosures by contract. But, for private companies, that emission information may not be public or audited by a third party. Smaller companies may not have the resources on hand to accurately calculate Scope 3 emissions and, with low margins and minimal existing support, will need more time to prepare these than the Proposal allots. A requirement that public companies disclose Scope 3 emissions data imposes a financial and efficiency burden on private companies in their value chains. Scope 3 emissions are costly and administratively burdensome to prepare, particularly for smaller companies. Adding third party attestation requirements, even given the 2 - 4-year timeframe for achieving compliance, is a financial burden for smaller reporting companies. This burden will be particularly significant for smaller, private manufacturers with limited financial or personnel resources.
The SEC has not performed a cost-benefit analysis, required of every rulemaking proposal, sufficient to support the proposed rule and its reporting requirements. The SEC estimates the following costs of compliance for registrants:

- Non-SRC[5] registrants - $640,000 in the 1st year; $530,000 in subsequent years
- SRC registrants - $490,000 in the 1st year; $420,000 in subsequent years.
- Consultant costs to calculate GHG footprints (Scopes 1, 2, and 3 emissions) are estimated to cost between $75,000 and $125,000 if the client has no prior experience; ongoing costs may amount to approximately $40,000. If there are material changes to Scope 3 emissions, ongoing costs could range from $75,000 to $125,000.

However, the analysis is incomplete and insufficient to justify the burdensome requirements of the SEC's Proposal. On page 349 of the proposed climate rule, the SEC states:

> *In many cases, however, we are unable to reliably quantify these potential benefits and costs. For example, existing empirical evidence does not allow us to reliably estimate how enhancements in climate-related disclosure affect information processing by investors or firm monitoring.*

[5] SRC means "small reporting company."

The next 70 pages of the Proposal reference various studies and surveys for the possible benefits and costs. What is missing is any report presenting an estimate of what economy-wide, mandatory climate disclosures may likely or reasonably cost in practice. Without that, the Proposal lacks the necessary justification.

V. The 1% Threshold for Financial Metrics is Unrealistic and Unworkable.

The 1% threshold should be abandoned in favor of returning to a materiality standard. The granularity and specificity of the financial metrics pose significant practical barriers. If a threshold is needed, it should be based in industry-specific materiality assessments.

Environmental data is generally collected and finalized later in a fiscal year than the annual report (compliance dates for air emission data can vary from March 1 through July 1). Providing accurate data may simply be impossible as required in this rule. Assurance on that data generally will take an additional 60 days so providing assurance on that data within the time periods of the Proposal is unworkable. Added to this, multi-national companies face even longer time delays in gathering data from jurisdictions in countries that do not require accurate GHG data collection and assuring such data may be impossible.

Moreover, this rule requires that the *purpose* of expenditures be characterized as climate-related. The proposed rules ask registrants to silo such expenditures in the climate-related risk category. In reality, almost every expenditure has multiple purposes or addresses a variety of goals, from cost-saving to process improvement with carbon reduction being a side benefit. For example, in the EU, certain businesses are required by rule to move to fleet electrification; the purpose may be climate-related, but the capital expenditure is driven by the legal requirement. Not only characterizing expenditures but also being subject to differing characterization by those outside of the decision-making circle of the registrant poses new and significant enforcement risks. HDA believes this could have a chilling effect on disclosure or climate mitigation actions.

To the extent that the financial metrics force registrants to "slice-and-dice" expenditures, HDA believes that the requirements defeat one of the main purposes of the Proposal, that is, to bring climate-related data into the mainstream of a registrant's planning, risk evaluation, and strategy development.

To summarize, HDA believes that a more gradual transition, consultations with supply chain trading partners over a sector-specific data collection regime, and our other recommendations explained above can guide the SEC to a more tailored climate-related risk disclosure rule that provides valuable investor information.

Sincerely,

Elizabeth A. Gallenagh
General Counsel and Senior VP, Supply Chain Integrity