The Honorable Gary Gensler
Chair
Securities and Exchange Commission
100 F. St. NE
Washington, DC 20549

Re: RIN 3235–AM87, The Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Chair Gensler,

On behalf of the team members of AMERCO and the U-Haul system (NASDAQ- UHAL[1]), I provide this response to your request for comment on the SEC's new proposed rule on climate-related risk disclosures.

Now the largest truck-sharing company in North America, U-Haul was started in 1945 by my mother and father as they returned from military service. U-Haul remains family managed today, and we view the communities we operate in as partners in our business. As U-Haul approaches a community, that partnership enables us to collaborate to reduce vehicle registrations and greenhouse gas emissions. We have pioneered starch-based packing peanuts, permeable ground cover, cardboard-box reuse, moving pads from discarded fabrics, reuse of obsolete buildings, improved fuel economy, and a long list of other award-winning sustainable business practices.

U-Haul defines itself as being in the shared-use business. The sharing model itself is one of good stewardship and careful management of the Earth's resources, while making these resources readily available to more of the Earth's inhabitants. Done well, our sharing model enhances sustainability.

It is in the light of this commitment to sustainability that I write this letter. U-Haul believes that our commitment to environmental stewardship and a reduction of our greenhouse gas emissions is part of our duty. But the climate-related risk disclosures called for in the proposed rule are impractical, illegal, and unconstitutional.

[1] AMERCO has two Board members certified as a Certified Director of the National Association of Corporate Directors—AMERCO is the first public company to have 2 Directors receive this distinction.

The Proposed Rule is Duplicative of U-Haul's Already Substantial Obligations Under Federal, State, and Local Environmental Laws

Compliance with environmental requirements—federal, state, and local—is already a significant part of U-Haul's business.

As required by current SEC regulations, U-Haul already discloses material climate- and environment-related risks in its annual shareholder disclosures, including statements that U-Haul complies with existing environmental laws and regulations, while acknowledging that those laws and regulations may change.

Those existing requirements hold U-Haul to strict standards for clean air, clean water, and clean land.

For example, our truck and trailer rental business is held to strict standards of vehicle emissions—including greenhouse gas emissions, by the Environmental Protection Agency. EPA has recently proposed updated light-duty vehicle and heavy-duty vehicle rules, tightening restrictions on nitrous oxides (NOx) and on greenhouse gases.[2] This is part of EPA's aggressive plan that is "charting a path to advance zero-emission vehicles" in the American automotive fleet.[3]

In California and in the 15 other states that have adopted California's standards, our vehicles meet the even more stringent requirements of the California Air Resources Board (CARB). CARB's light-duty vehicle and heavy-duty vehicle rules have set aggressive standards that we work to comply with.

In addition, our storage business is also subject to federal, state, and local laws and regulations relating to environmental protection. These regulations limit discharge into the air, water, and land and require us to undertake remediation projects for contaminated land.

This web of regulations serves as a backstop to climate-related risk that our investors can be assured we are meeting. There are risks associated with a changing climate and a changing regulatory environment. But when these risks are material, we are already required to disclose them. And we do.

Policy Benefits of Principles-Based Approach

As I mentioned in my June 2021 comment letter, the SEC has considered and rejected calls to create mandatory prescriptive disclosure standards and instead

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[2] See *EPA Proposes Stronger Standards for Heavy-Duty Vehicles to Promote Clean Air, Protect Communities, and Support Transition to Zero-Emissions Future*, EPA (Mar. 7, 2022), https://www.epa.gov/newsreleases/epa-proposes-stronger-standards-heavy-duty-vehicles-promote-clean-air-protect.

[3] *Id.*

preferred S-K disclosure to employ a principles-based approach. Rather than prescriptive standards, which employ a one-size-fits-all approach to disclosure, a principles-based approach "provide[s] registrants with the flexibility to determine (i) whether certain information is material, and (ii) how to disclose such information."[4]

This principles-based approach filters out immaterial information that would dilute material disclosures and make it harder for investors to make decisions.[5] Additionally, the principles-based system "elicit[s] disclosure that is more in line with the way the registrant's management and its board of directors monitor and assess the business, and therefore (1) would be easier for registrants to prepare using existing metrics and reporting mechanisms and (2) would provide investors better insight into the decision-making process, current status, and prospects of the registrant."[6]

A prescriptive one-size-fits-all approach prevents the organic development of materiality standards to fit changing circumstances and market preferences. This is exactly why the SEC has refused to issue prescriptive standards in the past: "The Business Roundtable cites 100 times the SEC failed to include societal issues as material, arguing, '[I]t is impossible to provide every item of information that might be of interest to some investor in making investment and voting decisions.'"[7]

A principles-based approach is particularly well suited to climate-related risk disclosures because "the relevant information tends to vary greatly across companies" and "the more standardized prescriptive requirements are less likely to elicit information that is tailored to a specific company."[8] Greenhouse gas emissions are a perfect example of how the "relevant information" varies greatly between companies. While a rise in Scope 1 and Scope 2 greenhouse gas emissions for a technology company may be evidence of increasing environmental impact, the same rise may be evidence of *decreasing* environmental impact when coming from a rental business

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[4] 85 Fed. Reg. at 63,747.

[5] *Id.; see also* Am. Securities Ass'n, Comment, File No. S7-11-19 (Oct. 25, 2019) (noting that a principles-based approach "rightly emphasizes that the quality—rather than volume—of disclosure is what ultimately matters to investors").

[6] *Id.*

[7] Chandler Crenshaw, *Murky Skies Ahead! Analyzing Executive Authority and Future Policies Regarding Corporate Disclosure of Greenhouse Gases*, 42 Wm. & Mary Envtl. L. & Pol'y Rev. 285, 295 (2017) (quoting Business Roundtable, *The Materiality Standard for Public Company Disclosure: Maintain What Works* 5–6 (Oct. 2015).

[8] 85 Fed. Reg. at 63,749; see also William Hinman, Director of Corporation Finance, U.S. Securities and Exchange Commission, *Applying a Principles Based Approach to Disclosing Complex, Uncertain, and Evolving Risks*, (March 19, 2019) ("As we approach [ESG] or other disclosure topics, I am always cognizant that imposing specific bright-line requirements can increase the costs associated with being a public company and yet not deliver the relevant and material information that market participants are seeking."); SEC, Report on Review of Disclosure Requirements in Regulation S-K 97-99 (2013).

like U-Haul. That is because each rental from U-Haul displaces emissions that could come from another source. For example, because U-Haul has moving trucks available to rent, individuals and small businesses are less likely to purchase and regularly drive a large truck whose hauling capacity they need only occasionally. Instead, they purchase a smaller vehicle for daily use and then rent a large truck only when they need it. The result is a colossal reduction in greenhouse gas emissions, but that reality is not captured in the proposed rule.

It makes no sense to carve out climate-related risk disclosures for a prescriptive approach, and the SEC has not provided the necessary justification for this choice. In the list of "reasonable alternative[]" proposals, the proposed rule does not even acknowledge the possibility of maintaining the current principles-based materiality requirement.[9] Under the current principles-based approach, the SEC and private parties have a right of action to pursue relief when companies breach the existing disclosure requirements, including because of omitted or misstated climate-related risk information. The proposed rule does not explain why these robust enforcement mechanisms have proven inadequate in ensuring that companies provide climate information, especially because the SEC itself could bring enforcement actions if it honestly believed that companies were not disclosing material climate information.

The proposed rule argues that uniform, mandatory disclosures will necessarily aid stakeholders, but, as discussed next, it sets the bar for disclosure so low that it will actually just bury investors in an avalanche of trivial information, making it *harder* to find the climate-related information that is actually relevant to a company's performance.

<u>The Proposed Rule Will Confuse Investors and Obfuscate U-Haul's Industry-Leading Innovations</u>

Any regulatory regime must incorporate careful consideration of how tight the controls should be in promoting consistency and accountability without compromising the regulatory benefits of promoting flexibility and innovation, the key driver of long-term economic growth of the United States.[10]

U-Haul has long been an industry innovator in maximizing efficiency and avoiding waste. But by requiring a one-size-fits-all framework rather than a principles-based framework, the proposed rule will penalize companies like U-Haul that have long created difficult-to-quantify, but real environmental benefits, and will

[9] 87 Fed. Reg. at 21,448–52.

[10] EUGENE BARDACH & ROBERT A. KAGAN, GOING BY THE BOOK, THE PROBLEM OF REGULATORY UNREASONABLENESS (1982).

also mislead investors by giving erroneous impressions about the actual environmental impact of peer companies. For example:

- U-Haul rental trucks have long used a low profile, rounded corners, and advanced chassis skirts to reduce wind drag and improve fuel economy by up to 20%, and fuel economy gauges are installed in every new-production truck to provide real-time feedback to drivers to optimize fuel consumption. Most of our U-Haul locations are built with energy-efficient lighting, HVAC systems, and daylighting, saving more than 42,000,000 kWh every year. Many of our locations also take part in permeable ground cover initiatives, reducing stormwater run-off, recharging the ground water supply, and reducing greenhouse gas emissions by limiting local heat islands and significantly reducing energy expended in water treatment. But many of our competitors have not utilized these mechanisms, meaning they can adopt them in the future and give a faux appearance of dramatically "improving" their footprint, which may mislead investment decisions. The metrics will not actually help comparability for investors since U-Haul's rental share model is unique.

- U-Haul has a fleet of thousands of vehicles, but that large number of vehicles reduces global emissions because, in our business analysis, a truck available for short-term rental in a neighborhood will eliminate the equivalent of nineteen high-capacity vehicles (such as full-size pickup trucks or SUVs) from being registered over a ten-year period. But the proposed rule provides no means by which U-Haul can present this incredible greenhouse gas reduction in any sort of industry-comparable manner.

- U-Haul rental trailers are the single most fuel-efficient way to transport goods with a private-owned vehicle because they greatly expand carrying capacity while imposing only modest and temporary decreases in the tow-vehicle's own fuel economy. But the proposed rule is unclear about how U-Haul can account for the savings of using a trailer versus the alternative of customers making repeat trips in their own vehicles. And that is even assuming U-Haul could somehow calculate this exact figure, which itself presents considerable difficulties.

- Relatedly, all U-Haul rental trucks have the ability to tow another vehicle—an option utilized by approximately one-third of our customers—thereby reducing emissions by eliminating the need to separately drive a personal vehicle during a move. But again, it is difficult to imagine how U-Haul can quantify these savings for purposes of the proposed rule.

- U-Haul has more than 23,200 locations. That vast number of locations actually reduces emissions, by allowing customers to drive less distance to find a rental truck or trailer, and then drive less distance to return it when finished. Again, it is exceedingly difficult to determine precisely how much fuel this saves, making it difficult for U-Haul to include any such estimate in a forthcoming report pursuant to the proposed rule.

- U-Haul rental trucks typically last seven to twelve years before replacement, compared to 1.5 years on average for rental car companies' equipment and 4 years for rental truck "peers". Rental car companies will periodically purchase electric and fuel-efficient vehicles, giving the impression of using efficient technology. But that ignores the tremendous environmental consequences of manufacturing all of those new cars and replacing them every 18 months. Those harms are far greater than using a perhaps slightly-less-efficient vehicle for far longer, as U-Haul does. Again, the proposed rule provides no meaningful way for U-Haul to capture the environmental savings of using vehicles for a decade rather than frequently replacing them with electric vehicles. And investors will be misled by the apparent "green" nature of companies that, in reality, just buy new vehicles every 18-48 months.

- Given the present realities of long-distance moving, U-Haul has no electric-vehicle solution for most transactions. Customers often drive lengthy distances using our equipment, making it ill-suited for range-limited electric vehicles. Thus, the proposed rule will give the false impression that U-Haul's vehicles are not "trending green," whereas in reality U-Haul has long been a leader in this area but is limited by the inherent nature of long-distance moving and available technology[11].

- U-Haul also has a pioneering renewable propane initiative: providing propane derived from renewable sources like grease residue and biomass feedstocks to deliver lower carbon options to our customers. While this product comes at a premium price, we have chosen to absorb the cost so our customers will benefit the environment at no additional charge. But again, the proposed rule provides no obvious framework for recognizing the benefits of a program like this. In fact, this proposed rule penalizes companies such as U-Haul to expand or even sustain their current operations.

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[11] *See* DOE Announces Nearly $200 Million to Reduce Emissions Trucks from Cars and Trucks, November 1, 2021, Dept. of Energy.

By insisting on imposing a one-size-fits-all framework, the proposed rule suffers from dramatic over- and under-inclusiveness. Not only does this penalize companies like U-Haul that yield tremendous environmental benefits that are nonetheless difficult to measure, but it also misleads investors by giving the false impression that certain companies, even within the same industry, are "greener" than others. While measurements will appear comparable, further study will lead to misleading investors.

<u>The Proposed Climate-Related Risk Disclosures Transgress the Supreme Court's Interpretation of "Materiality"</u>

The proposed rule suffers from other significant flaws, including transgressing Supreme Court precedent. SEC Rule 405 sets out the definition of materiality for purposes of Regulation S-K: "The term material, when used to qualify a requirement for the furnishing of information as to any subject, 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."[12] This definition reflects the Supreme Court's interpretation of "material": "[T]here must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."[13] The Court explains that the "public interest" is not furthered by requiring companies "simply to bury the shareholders in an avalanche of trivial information," which "is hardly conducive to informed decision-making" and thus would "accomplish more harm than good."[14]

Under the principles-based approach, regulated entities use this definition to determine case-by-case whether a "reasonable investor" would consider the disclosure relevant. As the SEC acknowledges, this is information that a company must already disclose.[15]

But the proposed rule requires complex, expansive, and speculative disclosures far beyond what are required by the current materiality standard.[16] The proposed rule requires Scope 1 and Scope 2 emissions data from registrants despite seemingly acknowledging that those emissions are not material for all registrants. At most, the proposed rule says only that such emissions "may" face "declines in cash flows" and thus investors "may" want Scope 1 and Scope 2 information.[17] The proposed rule

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[12] 17 C.F.R. §230.405.
[13] TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976).
[14] *Id.* at 448–49.
[15] 87 Fed. Reg. at 21,368.
[16] Comm'r Hester M. Peirce, *We Are Not the Securities and Environment Commission—At Least Not Yet*, Mar. 21, 2022, https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321.
[17] *Id.* at 21,434.

suggests that there might be "future regulations" that "may" require reductions in emissions, and thus this information might be material in this hypothetical future world.[18] The proposed prescriptive approach would fundamentally shift the focus of disclosures from a "reasonable investor" to a one-size-fits-all requirement that provides all information that may be important to someone in a hypothetical future.[19] This seems to be exactly the "avalanche of trivial information" that Supreme Court warned of.[20]

Even for data that must be disclosed only when "material," it is clear that the proposed rule has diluted the meaning of materiality.[21] For instance, Scope 3 emissions must be disclosed only when material, but the proposed rule suggests that such disclosures are generally material, and any doubts must "be resolved in favor of" over-disclosure.[22] But given that Scope 3 emissions are not under the direct control of the registrant, it is difficult to see how they can be material—let alone presumptively material—to that registrant's financial performance.

<u>The Proposed Climate-related Risk Disclosures are Arbitrary and Capricious</u>

The proposed rule would also be arbitrary and capricious for a variety of reasons.

First, the proposed rule is internally inconsistent because it mandates the disclosure of information that it acknowledges are highly speculative and will not be useful to a reasonable investor. The proposed rule acknowledges that climate-related risks are very difficult to calculate accurately because of the "uncertainty and complexity of climate-related risks and the multidimensional nature of the information being disclosed," which can manifest themselves over decades.[23] This uncertainty means that much of the required disclosures will be guesswork and, as the rule acknowledges, there is no "predictable investor response[]" to such speculative disclosures.[24] Still, the proposed rule concludes that the solution is to

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[18] *Id.* at 21,435.

[19] *See* Matrixx Initiatives, Inc. v. Siracusano, 563 U.S. 27, 30–31 (2011) ("We conclude that the materiality of adverse event reports cannot be reduced to a bright-line rule. Although in many cases reasonable investors would not consider reports of adverse events to be material information, respondents have alleged facts plausibly suggesting that reasonable investors would have viewed these particular reports as material."); *see also* Chandler Crenshaw, *supra* at 298 ("Similar to the risk factors test, the SEC needs to focus more on fact-based inquiries as opposed to introducing a blanket rule in order to survive judicial scrutiny.").

[20] *Id.* at 448–49.

[21] Comm'r Hester M. Peirce, *We Are Not the Securities and Environment Commission—At Least Not Yet*, Mar. 21, 2022, https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321.

[22] 87 Fed. Reg. at 21,378.

[23] 87 Fed. Reg. at 21,427.

[24] 87 Fed. Reg. at 21,427.

mandate the disclosure of such information.[25] This is internally inconsistent and illogical and thus arbitrary and capricious.

Second, the proposed rule does not justify its break with longstanding policy and fails to confront the SEC's past findings and provide good reasons for departing from them. The SEC has not articulated why the current principles-based system of environmental disclosure is insufficient.[26] Similarly, the SEC has long concluded that "disclosure relating to environmental and other matters of social concern should not be required of all registrants unless appropriate to further a specific congressional mandate or unless, under the particular facts and circumstances, such matters are material."[27] For the SEC to change its position dramatically from a prior regime, as the proposed rule seeks to do, it must (1) "display awareness that it is changing position," (2) "show that there are good reasons for the new policy" and (3) "take[] into account" "reliance interests" on the prior policy.[28] Because the proposed rule fails to do this, it is arbitrary and capricious.

Third, the proposed rule is arbitrary and capricious because it will impose extensive costs with only minimal benefits. The SEC has a "unique obligation" under the Exchange Act to "consider the effect of a new rule upon efficiency, competition and capital formation."[29] Just over a year ago, the SEC conducted a full cost-benefit analysis and determined that a principles-based approach had greater net benefits than a prescriptive approach.[30] Because this recent reaffirmation rested on robust factual findings, the SEC would have to provide an even more robust analysis to explain the abrupt change in course of the proposed rule.[31] It does not. The costs of the proposed rule will be vast—the SEC estimates about $15.3 billion, with over $3.5

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[25] 87 Fed. Reg. at 21,445.

[26] See N.Y. Stock Exch. v. SEC, 962 F.3d 541, 556–57 (D.C. Cir. 2020) ("Rules are not adopted in search of regulatory problems to solve; they are adopted to correct problems with existing regulatory requirements that an agency has delegated authority to address."); Am. Equity Investors Life Insurance Company v. SEC, 613 F.3d 166, 178–79 (D.C. Cir. 2010) (agency must consider whether "the existing regime" already provided "sufficient protections . . . to enable investors to make informed investment decisions."); Bus. Roundtable v. SEC, 647 F.3d 1144, 1154 (D.C. Cir. 2011) (agency must consider whether existing "regulatory requirements . . . reduce the need for, and hence the benefit to be had from," the challenged rules).

[27] *Business and Financial Disclosure Required by Regulation S-K*, 81 Fed. Reg. 23,916, 23,970 (Apr. 22, 2016); *see Environmental and Social Disclosure, Notice of Commission Conclusions and Rulemaking Proposals*, 40 Fed. Reg. 51,656, 51,657 (Nov. 6, 1975).

[28] F.C.C. v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009).

[29] Bus. Roundtable, 647 F.3d at 1148 (citing 15 U.S.C. §§78c(f), 78w(a)(2)).

[30] 85 Fed. Reg. at 63,747–754.

[31] Fox, 556 U.S. at 515 (when an agency's "new policy rests upon factual findings that contradict those which underlay its prior policy," it must "provide a more detailed justification than what would suffice for a new policy created on a blank slate"); Music Choice v. CRB, 970 F.3d 418, 429 (D.C. Cir. 2020).

billion of that in the first year alone[32]—but then acknowledges that it underestimates true costs because it cannot "fully and accurately quantify" the costs of emissions reporting.[33] To offset these costs the proposed rule only suggests that the mandated disclosures "could" yield public benefits—but those benefits are minimal at best because registrants already must disclose material climate information.[34] As noted above, the proposed rule will actually harm investors by burying them in an avalanche of trivial information, making it even harder to separate the relevant and irrelevant climate information. Because the proposed rule does not provide sufficient evidence that it passes a cost-benefit analysis, it is arbitrary and capricious.

Fourth, the proposed rule is arbitrary and capricious because it does not adequately address the significant reliance interests that have grown up around the decades-old principles-based system. Regulated entities will have to reshape their processes to shift from a principles-based approach to a prescriptive approach.[35] This will impose substantial cost as companies will need to determine and disclose vast amounts of data that will sometimes be nearly impossible to determine accurately. Because of the lack of certainty, these disclosures will likely also generate substantial liability. The SEC cannot simply ignore these serious reliance interests.[36]

Finally, the SEC's reliance on climate-activist investor groups calls for climate-related risk disclosures in justifying the proposed rule renders the rule arbitrary and capricious. Many groups—like Climate Action 100+ and Ceres—whom the SEC points to as calling for climate-risk disclosures do so not because they believe the disclosures will foster investor confidence or improve financial performance, but because they believe they will help combat climate change. In response to the wishes of these groups, the SEC bases the proposed rule largely off global disclosure regimes like the GHG protocol and disclosures designed by the Task Force on Climate-Related Financial Disclosure that are more focused on climate change than financial performance. These justifications bring the SEC's disregard of statutory factors to a new level and explicitly go beyond American concepts of investor protection.[37] Indeed,

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[32] See 87 Fed. Reg. at 21,439

[33] *Id.* at 21,441.

[34] *Id.* at 21,430.

[35] *See* Am. Securities Ass'n, Comment, File No. S7-l 1-19 (Oct. 25, 2019); *see also* 85 Fed. Reg. at 63,747–754 (noting reliance interests and significant costs associated with shifting to prescriptive approach).

[36] *See* Encino Motorcars, LLC v. Navarro, 136 S. Ct. 2117, 2126 (2016) ("A summary discussion may suffice in other circumstances, but here-in particular because of decades of industry reliance on the Department's prior policy-the explanation fell short of the agency's duty to explain why it deemed it necessary to overrule its previous position.").

[37] *See, e.g.*, Roberta S. Karmel, *Disclosure Reform-the SEC ls Riding Off in Two Directions at Once*, 71 Bus. Law. 781, 815 (2016) ("In spring 2014, the European Parliament passed a law that will go into effect in 2017, requiring publicly traded companies with more than 500 employees to report on nonfinancial sustainability factors.").

even the SEC's own advisory committee has acknowledged the incompatibility of approaches like these with the Exchange Act.[38] This reliance is therefore contrary to law and also arbitrary and capricious.

The Proposed Rule Violates the First Amendment

The Supreme Court recently reiterated that more lenient First Amendment scrutiny applies only to laws requiring the disclosure of "purely factual, uncontroversial information."[39] Beyond this limited exception, the Court's precedents "have long protected the First Amendment rights of professionals,"[40] and "[c]ommercial speech is no exception."[41] As the D.C. Circuit has explained, this is particularly so when a securities disclosure rule is "directed at achieving overall social benefits" rather than "generat[ing] measurable, direct economic benefits to investors or issuers."[42] If it were otherwise, the SEC could "easily regulate otherwise protected speech using the guise of securities laws."[43]

For these "social benefits" regulations, no form of securities exceptionalism or lax First Amendment standards apply.[44] Instead, "compelling an issuer to confess blood on its hands . . . interferes with th[e] exercise of the freedom of speech under the First Amendment."[45] The D.C. Circuit applied this reasoning to hold the Dodd-Frank's conflict minerals provision unconstitutional.

A climate-related mandatory standard so expansive and untethered from traditional case-by-case materiality standards is clearly designed to regulate the climate behavior of registrants and their suppliers—putting it far beyond the "purely factual, uncontroversial" type of disclosures the Supreme Court has authorized. The goal is to impose an unconstitutional "name and shame" that is intended to let activists target companies deemed insufficiently dedicated to addressing climate change.[46] Thus, the proposed rule only serves as a means to a political end, and that is directly relevant to whether the proposed rule passes muster under the First Amendment. As Commissioner Peirce explains, "the information is unrelated, or only tangentially related, to the statutory objectives [of the SEC]," meaning "it likely is

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[38] *See* Transcript of Asset Management Advisory Committee Meeting 84-85 (Dec. 1, 2020) (noting the EU's "more fulsome requirement" is not "[s]uitable for the mandate of investor protection").

[39] NIFLA v. Becerra, 138 S. Ct. 2361, 2372 (2018).

[40] *Id.* at 2374

[41] Sorrell v. IMS Health, Inc., 564 U.S. 552, 566 (2011).

[42] Nat'l Ass'n of Manufacturers v. SEC, 800 F.3d 518, 522 (D.C. Cir. 2015).

[43] *Id.* at 555.

[44] *See* Jerry W. Markham, *Securities & Exchange Commission vs. Elon Musk & the First Amendment*, 70 Case W. Res. L. Rev. 339, 369-70 (2019).

[45] Nat'l Ass'n of Manufacturers, 800 F.3d at 530.

[46] *See id.* ("Requiring a company to publicly condemn itself is undoubtedly a more 'effective' way for the government to stigmatize and shape behavior than for the government to have to convey the views itself, but that makes the requirement more constitutionally offensive, not less so.").

controversial" for the SEC to demand such information, in violation of Supreme Court precedent.[47]

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Analysis of our climate-related performance must not fail to include the positive benefits we have brought to U-Haul customers and the country for over 75 years. We are proud to have provided to hundreds of millions of people the most affordable and environmentally friendly method to move to a better life for themselves and their families. U-Haul has intentionally sought to reduce its carbon footprint by allowing most United States residents the ability to rent U-Haul equipment within a short distance from their home. This includes thoughtfully investing in new locations in historically underserved and lower income neighborhoods, often as the first or only national business in these areas, hiring locally and allowing local residents the same opportunity to improve their lives.

U-Haul takes seriously our commitment to our investors, to our customers, to the environment, and to reducing greenhouse gas emissions. But the proposed rule contains serious practical issues, as well as numerous legal and constitutional violations.

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<u>Postface: A Personal Note from the Chairman</u>

I anticipate as this disclosure rule evolves you will expect me to hire "consultants" to opine on the "progress", or lack of, that AMERCO/U-Haul is making towards our projected carbon neutral future.

Then, you will require my signature to represent that this "comparable measurement" on these GHG emissions is accurate. It will be extrapolated from multiple data points, most of which have a range of at least twenty percent plus or minus. Our hired "expert" will take these estimates and manipulate them summing or dividing or graphing them until the "data" is a compilation of estimates upon estimates. My statistics professor alerted me to this mistake decades ago. The data will not be precise.

Not to worry. The Federal Government will back away from its own data as "critical" or "measurable" dates occur. We have already seen this done with global climate accords.

[47] Comm'r Hester M. Peirce, *We Are Not the Securities and Environment Commission—At Least Not Yet*, Mar. 21, 2022, https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321.

However you plan to have trapped me and this public company into publishing and attesting to data that we already know is not accurate – Yet you expect me to hire "experts" who will do extensive/expensive studies of our GHG emissions, those of our customer, those of our suppliers. These studies will include the standard disclaimer that the "Company" (me and AMERCO/U-Haul) are solely responsible for the data and the "expert" did not/could not independently verify the data points.

This is a classic Catch 22 that I am not going to willingly participate in. Yet, if the Company and I refuse to participate in promulgating this inaccurate data, (read lies) the SEC will encourage markets and regulators to punish us. If we do participate, the big plaintiff firms will learn about this "misinformation", which they will assert investors/lenders relied upon. They will find a market dip and allege enormous damages.

You have asked for feedback on your proposed GHG disclosures. Well now you will have mine. The outright confusion, possible fraud, misinformation, lack of comparability that this proposed regulation causes will be substantial. On top of that, the SEC expects the Company to spend Shareholder dollars in this colossal misadventure.

It is not part of our business practice to fritter away Shareholder dollars. Yet this rule will result in ongoing economical waste on an annual basis.

Now the SEC wants to jump on board. You have hundreds of pages in your proposed rule. You will have me hire "consulting experts" offering to guide ignorant companies like AMERCO/U-Haul through this wasteful regulatory morass, which is not sustainable.

I do not go willingly into your destructive use of customer and shareholder's money. As a capitalistic business we are supposed to be getting the customers a better deal. Creating an improved standard of living with our products and services.

This GHG rulemaking is worse than nonsense.

Actually, AMERCO/U-Haul has been consciously working on Sustainability for over 30 years.

In 1962 we adopted a Primary Service Objective: "To provide a better and better product and service to more and more people at a lower and lower cost." We clearly understand that customer cost includes any degradation of the environment. We are now 60 years into this effort.

Some specifics:

- Truck fuel economy – We pioneered a fuel economy gauge in 1973. In 2008 we were able to get Ford to make it a default setting in the truck's information display.
- Trailer renting – A trailer is the single greatest way to impact the GHG and carbon footprint of a household mover. For a temporary time period a standard automobile can transport as much as a full-size pickup with a modest temporary increase in fuel consumption.
- Airflow enhancements – Rounded van box corners and Mom's Attic carry airflow from windscreen over the van body roof, which combined with lower overall height than competitors and wind deflecting side skirts increase fuel economy.
- Penske Truck Rentals owner Roger Penske has a truck that transports his race cars that is streamlined like a bullet train. Yet his rental trucks look like parachutes. When asked about the difference, Roger replied "I don't buy the gas". He can easily follow U-Haul with streamlining. We did the work over the past decades and now Penske will appear to be making great progress and U-Haul not so great progress, confusing and misleading investors.
- Propane fuel – U-Haul maintains the largest propane vehicle refueling network in the USA. An enormous commitment to Alternative Fuels that is now out of vogue. We have tried to help.
- Location strategy – U-Haul maintains more than 23,200 locations in North America. GHG emissions are reduced as customer/user has less distance to travel to obtain rental equipment. A massive reduction in miles traveled. A key part of our over 40-year Truck Sharing strategy.
- Rotation vehicles – Rather than sell vehicles, U-Haul deploys higher mileage vehicles into neighborhood locations. Over a 10-year timeframe, each such shared vehicle results in replacing 19 high-capacity vehicles in the area.
- Packing peanuts are made from starch, not Styrofoam. Reusable moving boxes made from 34% post-consumer recycle. Moving blankets made from salvage fabric fibers. Reusable moving containers.
- Sustainable storage – Truck van boxes reused as self-storage rooms after the truck itself is worn out and scrapped. A van box becomes a building 100% reuse.
- Building reuse – Over 50% of our 76,000,000 sq ft of self-storage is in reused buildings. By repurposing buildings, we save all the GHG created by demolition and haul away. We avoid the enormous GHG consequences of new building construction using concrete, steel, and gypsum. No one in the self-storage business compares. This will be hidden by your prepared standards.

These are some of the ways AMERCO can and has been lowering its carbon footprint and GHG emissions. The proposed regulations take us away from what we know and can do to what is unknowable and likely undoable.

This is not to say we will fail to embrace EV fleet solutions if and when something is workable and is actually offered for sale. We would embrace this to the extent it serves our customer's truck sharing needs. Contrary to the hype, a battery electric truck that can travel Phoenix to Flagstaff (120 miles) in June does not exist in prototype or even in concept.

Help me make sense out of your proposed regulation. I have been living this my entire adult life. My family will be laboring under these rules. I am giving you feedback from a person who will have to operate under the proposed rules. I will not be moving on to another job. I read your proposed rule and can see ten years out.

Thank you,

Joe Shoen

Edward Joe Shoen