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Submitted Via www.sec.gov/rules/submitcomments.htm

Hon. Gary Gensler, Chairman
c/o Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

**Re: SEC Notice of Proposed Rulemaking
The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87
Fed. Reg. 21334 (April 11, 2022)**

Dear Chairman Gensler:

The Independent Lubricant Manufacturers Association (“ILMA”) submits the following comments on the Securities and Exchange Commission’s (“SEC”) proposed rule, “The Enhancement and Standardization of Climate Related Disclosures for Investors” (“Proposed Rule”). The Proposed Rule, if finalized, would mandate extensive climate disclosures by public companies, including Scope 3 greenhouse gas emissions for their *entire* value or supply chain. As discussed below, the cost and competitive “knock on” effects of the Proposed Rule, if promulgated “as is,” could be significant for most independent lubricant manufacturers represented by ILMA.

Introduction of ILMA

ILMA, established in 1948, is an international trade association of 341 lubricant manufacturing, distribution, and supplier member companies, most of which are headquartered in the U.S. The overwhelming majority of the Association’s member companies are “small businesses,” as defined by the U.S. Small Business Administration. As a group, ILMA Manufacturing Member companies manufacture and sell over 70 percent of the metalworking fluids and 25 percent of all lubricants utilized in North America. Many member companies export finished lubricants from the U.S. or maintain business arrangements for the international use of their proprietary formulae.

Independent lubricant manufacturers are neither owned nor controlled by companies that explore for or refine crude oil to produce lubricant base oils. Base oils are purchased from refiners, who are also competitors in the sale of finished products. Lubricant additives are purchased from chemical companies, who also may be

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Chuck Decker, Advanced Lubrication Specialties
Chief Executive Officer, Holly Alfano
General Counsel, Jeffrey L. Leiter

competitors in the sale of finished lubricants. To succeed in this highly competitive market, independent lubricant manufacturers manufacture and sell high-quality, often specialized, lubricants. Independent lubricant manufacturers' success is directly attributable to their tradition of providing excellent, individualized service to their customers.

A 2020 study of the U.S. lubricants market by IHS Markit reveals that ILMA member companies in 2018 had \$14.6 billion in sales activity, contributed \$7.2 billion to GDP, and maintained 26,000 jobs that paid a total of \$2.7 billion in income. Throughout the COVID-19 pandemic, ILMA's members have been considered "essential businesses" and have kept producing the lubricants needed to sustain the economy.

Importantly, lubricants have key and sustainable roles to play in efforts to reduce greenhouse gas emissions, ranging from lubricating wind turbines used for producing renewable energy to dissipating heat in zero-emission vehicles.

For this proceeding, most independent lubricant manufacturers represented by ILMA are not public companies and, therefore, are not "registrants" required to report directly to the SEC. However, they are interested in the Proposed Rule because of its "knock on" effects from their suppliers and customers who are SEC registrants and who must collect and disclose Scope 3 emissions from their supply or value chains. Additionally, because most independent lubricant manufacturers represented by ILMA are "small businesses," the costs and burdens from their obligations to their SEC-regulated suppliers and customers from the Proposed Rule are likely to be enormous.

SEC Overreach

As an initial matter, the SEC has exceeded its statutory authority with its Proposed Rule by seeking to effectively regulate businesses, including ILMA members, that have never been under the SEC's jurisdiction. The SEC's primary purpose is to enforce the laws against market manipulation and fraud. However, the Proposed Rule moves the SEC well beyond its traditional regulatory role by mandating climate change reporting requirements that will not only regulate publicly traded companies but will affect every company in the registrant's supply or value chain. The SEC cannot ignore this "knock on" effect, particularly for smaller, privately-owned businesses, including independent lubricant manufacturers.

There Is Insufficient Time to Assess the Economic Consequences of the Proposed Rule

It has been difficult for ILMA and its members to understand and analyze the Proposed Rule, given the short time for public comments. The Proposed Rule is 510 pages long, and it contains 1,068 technical footnotes and 750 direct questions. However, stakeholders have been given only 87 days by the SEC to digest and prepare responsive comments on the Proposed Rule. ILMA's reading of the proposal suggests that independent lubricant manufacturers, as non-registrants, could face significant costs and liabilities in monitoring or collecting and then reporting Scope 3 greenhouse gas emissions to registrants, namely their raw material suppliers and finished lubricants customers. Even a basic economic analyses of the Proposed Rule's Scope 3 emissions requirements on ILMA members would take more than 87 days to complete.

The Proposed Rule's expansive reporting requirements for Scope 3 emissions, if promulgated, not only directly affects independent lubricant manufacturers operations, but will create substantial costs and liabilities, such as reporting obligations, technical challenges, significant financial and operational disruptions, and the risk of significant legal liabilities. Again, there is inadequate time provided by the SEC to prepare more detailed responsive comments on each of these issues. Nonetheless, ILMA is certain that the Proposed Rule, if finalized, will have a significant economic impact on a substantial number of small businesses, including

independent lubricant manufacturers. ILMA, therefore, requests that the SEC undertake a more robust analysis of regulatory alternatives under the Regulatory Flexibility Act to minimize burdens on small entities, especially non-registrants, before finalizing the Proposed Rule.

Compliance Concerns with Scope 3 Emissions

Under the Proposed Rule, a registrant would be required to disclose greenhouse gas emissions from upstream and downstream activities in its value or supply chain under many, if not most, circumstances. For Scope 3 emissions disclosures, the Proposed Rule would require public companies to disclose the emissions for each significant category of their value or supply chain, expressed in metric tons of carbon dioxide equivalent. The disclosures would further need to be disaggregated by each constituent in the greenhouse gas (*i.e.*, carbon dioxide, methane, nitrous oxide, nitrogen trifluoride, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride).

For public companies that sell raw materials to, or that buy finished lubricants from, ILMA members to be compliant with the Proposed Rule, they would need to collect and disclose data derived from independent lubricant manufacturers' individual and day-to-day operations. Unlike the large corporations regulated by the SEC, independent lubricant manufacturers, especially those that are small businesses, do not have, and cannot afford, compliance officers or attorneys dedicated solely to responding to their suppliers or customers' SEC compliance activities. This could force independent lubricant manufacturers of all sizes, but especially those with smaller-sized operations, to report data they simply may be unable to provide, which would result in costly, additional expense or possibly the loss of the supplier or customer's business from the inability to report Scope 3 emissions.

Most independent lubricant manufacturers use various business management and accounting software tools to operate their businesses, including complicated software to generate and maintain safety data sheets. Even with the three-year transition period provided by the Proposed Rule, ILMA does not believe that current in-use software will enable independent lubricant manufacturers to capture anywhere near the amount of detailed information the Proposed Rule envisions for their suppliers or customers to report Scope 3 emissions. New software modules will need to be developed, and the adoption rate, which will be largely dependent on cost and ease of use, likely will exceed the three-year transition period being proposed by the SEC. It will be more efficient and sustainable over time if Scope 3 emissions software can be built around verifiable models, such as those developed by or available from the U.S. Environmental Protection Agency or other recognized authorities.

Privacy Concerns with Business Data

As ILMA understands the Proposed Rule, there is a significant amount of business data that would be collected for Scope 3 emissions reporting. Such volume of data leads directly to the issue of data privacy, including personal identifying information. Unlike public companies, most independent lubricant manufacturers are family businesses and there are questions about how their privacy will be protected.

The privacy concerns also extend to competitive and highly confidential information, such as sales volumes in any given period, and the ability of others to "reverse engineer" such proprietary information. Access to these kinds of data also could be used in other regulatory areas. In addition, it could pit independent lubricant manufacturers against each other based on each one's willingness to share data that could put one business at a competitive advantage over the other. At a minimum, ILMA believes that shared data could be used by companies or individuals to influence buying and other decisions in the marketplace.

Taking the privacy concerns a step further, the reporting requirements for Scope 3 emissions will force many independent lubricant manufacturers to find ways to limit the data demands from their raw material suppliers and finished lubricant customers who are public companies. As an example, if an independent lubricant manufacturer is not able to provide a customer with the necessary data and information to make its required Scope 3 emissions disclosure, this registrant could be forced to look elsewhere to purchase its finished lubricants from a competitive entity that has the needed Scope 3 emissions information. This “search for data,” rather than any other business consideration, could push small and medium-sized independent lubricant manufacturers out of business or effectively restrict them from participating in certain markets, such as where they compete directly with their raw material suppliers who are registrants.

Concerns with Potential Liability

The Proposed Rule’s arbitrary standard for materiality of Scope 3 emissions is a major flaw. While the Proposed Rule does not set a standard, quantitative threshold for determining materiality, it does suggest that if a company’s Scope 3 emissions constitute at least 40% of its total greenhouse gas emissions, then such emissions might be material. Currently, an item is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision.

As a result of the proposed materiality standard, independent lubricant manufacturers could face potential liability if their activities could be considered material to a registrant’s financial disclosures. The liability attaches to both the quantification of the independent lubricant manufacturer’s Scope 3 emissions, which would lack accuracy and consistency, and not being able to comply with the reporting requirements at the end of the three-year transition period.

As noted above, the best way from ILMA’s perspective to quantify Scope 3 emissions is through modeling. It is less expensive than direct monitoring (currently not required under the Proposed Rule) and third-party auditors, which brings another layer of costs and liability to independent lubricant manufacturers’ activities. The SEC should allow as much as possible consensus standards or recommended practices within industries, as well as guidance documents produced by governmental and recognized non-governmental organizations.

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ILMA appreciates the opportunity to comment on the Proposed Rule

Sincerely,



Holly Alfano
CEO