June 17, 2022

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 Energy Marketers of America ("EMA") 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 measured impacts for their *entire* value or supply chain. As discussed below, the impacts of the Proposed Rule, if promulgated "as is," could be severe for most of the energy marketers represented by EMA.

Introduction of EMA

EMA, previously known as the Petroleum Marketers Association of America, is a federation of 47 state and regional trade associations representing energy marketers throughout the United States. Energy marketers represent a vital link in both the wholesale and retail motor fuels distribution chain. EMA members supply 80 percent of all finished motor fuel products sold nationwide, including renewable hydrocarbon biofuels, gasoline, diesel fuel, biofuels, heating fuel, jet fuel, kerosene, racing fuel and lubricating oils. Further, energy marketers represented by EMA own and operate approximately 60,000 retail motor fuel locations across the country serving local communities and long-distance travelers along the nation's highways.

Importantly for this proceeding, most energy marketers represented by EMA 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. Additionally, because most energy marketers represented by EMA are "small businesses," as defined by the U.S. Small

Business Administration, the costs and burdens from their obligations to their SEC-regulated suppliers and customers from the Proposed Rule are likely to be enormous.

<u>The Economic Consequences of the Proposed Rule Are Difficult to Assess in 87 Days</u>

As an initial matter, 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 the Proposed Rule, which suggests that non-registrants, including individual energy marketers, could face significant costs and liabilities in monitoring and reporting Scope 3 greenhouse gas emissions ("Scope 3 emissions") to registrants, namely their motor fuel suppliers and customers. Even basic economic analyses of the Proposed Rule's Scope 3 emissions require more than 87 days to complete.

The Proposed Rule's expansive reporting requirements for Scope 3 emissions, if promulgated, not only directly affects energy marketers' operations, but will create substantial costs and liabilities, such as reporting obligations, technical challenges, significant financial and operational disruptions, and the risk of crippling legal liabilities. Consequently, the Proposed Rule, if finalized, will have a significant economic impact on a substantial number of small businesses, including energy marketers. EMA, therefore, requests that the SEC undertake a more robust analysis of regulatory alternatives to minimize burdens on small entities before finalizing the proposal.

<u>Compliance Concerns with Scope 3 Emissions</u>

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 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 motor fuels and/or heating fuels to be compliant with the Proposed Rule, if finalized, they would need to track and disclose data derived from downstream customers', including energy marketers', individual and day-to-day operations. Unlike the large corporations regulated by the SEC, energy marketers, as small businesses, do not have, and cannot afford, compliance officers or attorneys dedicated solely to SEC compliance activities. This could force energy marketers of all sizes, but especially those with smaller-sized operations, to report data they may be unable to provide, which would result in a costly, additional expense or possibly the loss of business from the inability to report data requested by their suppliers or customers.

Most energy marketers use various data software packages and other business software management tools to operate their businesses. Even with the transition period provided by the Proposed Rule, EMA does not believe that current in-use software will enable energy marketers 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 agreed-upon models.

Privacy Concerns with Business Data

As EMA 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 energy marketers 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 an energy marketer's volumes of motor fuel or heating fuel sales in a given period. Access to this kind of data could be used in other regulatory areas. In addition, it could pit energy marketers 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, EMA believes that shared data could be used by companies or individuals to influence decisions in the marketplace.

Taking the privacy concerns a step further, the reporting requirements for Scope 3 emissions will force many energy marketers to find ways to comply with the demands from their suppliers and customers who are public companies. If an energy marketer is not able to provide a customer with the necessary data and information required by the SEC registrant who must disclose its Scope 3 emissions, this registrant could be forced to look elsewhere to purchase its motor fuels or heating fuel from an entity that has that information. This search for data could push small and medium-sized energy marketers out of business.

Potential Liability Concerns

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, energy marketers could face potential liability if their activities could be considered material in a registrant's financial disclosures. The liability attaches to both the quantification of the energy marketer'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 EMA's perspective to quantify Scope 3 emissions is through modeling. It is less expensive than direct monitoring and third-party auditors, which brings another layer of costs and liability to energy marketers' activities.

SEC Overreach

The SEC has exceeded its statutory authority with its Proposed Rule by seeking to effectively regulate businesses 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 impact every company in the supply or value chain. The SEC cannot ignore this "knock on" effect, particularly for smaller, privately-owned businesses.

EMA appreciates the SEC's consideration of its comments.

Sincerely,

Rob Underwood
President