June 14, 2022

Vanessa A. Countryman
Secretary Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: SEC Notice of Proposed Rulemaking: "The Enhancement and Standardization of Climate-Related Disclosures for Investors", File No. S7-10-22/RIN 3235-AM87 (87 Fed. Reg. 21334) (April 11, 2022)

On behalf of the International Dairy Foods Association (IDFA), I respectfully submit these comments regarding the Security and Exchange Commission's (SEC's) proposed rule entitled "The Enhancement and Standardization of Climate-Related Disclosures for Investors." IDFA represents the United States' dairy manufacturing and marketing industry, which supports more than 3.3 million jobs that generate \$41.6 billion in direct wages and \$753 billion in overall economic impact for the U.S. economy. IDFA's diverse membership ranges from multinational dairy organizations to single-plant companies and small businesses. Our members include dairy companies with familiar branded products and companies that co-pack for other brands and private-label products. IDFA members also range from farmer-owned cooperatives and independent processors to food retailers and suppliers. Regardless of where an IDFA member sits in the dairy value chain, U.S. dairy is on the cutting edge of innovation and sustainable business practices. Together, IDFA members represent 90 percent of the milk, cheese, ice cream, yogurt and cultured products, and dairy ingredients produced and marketed in the United States and sold throughout the world.

While most of our retailer members and a few well-known consumer packaged goods (CPG) companies are publicly traded in the United States and across the globe, most IDFA members are privately held companies not subject to the SEC's jurisdiction. Many IDFA members with operations around the world are considered global leaders on Environmental, Social and Governance (ESG) principles, but many medium and smaller IDFA members are just beginning to develop comprehensive sustainability strategies and initiatives. Given the realities of the marketplace, however, while not regulated by a final SEC rule, our private company members would be *significantly* impacted by a final rule, as would the entire dairy supply chain. Therefore, we offer our comments below to provide the SEC with more perspective of our industry, our industry's commitment to reporting and lowering its greenhouse gas (GHG) emissions footprint in support of mitigating the harmful effects of climate change, and our members' needs as part of the "Scope 3" value chain. We hope these comments give the SEC a clearer understanding of the impact its rule would have on the dairy value chain and the need for flexibility regarding implementation and timelines, so that the ultimate regulatory and market burdens are lessened on our industry as we continue to lead the food and beverage sector in practicing responsible ESG principles.

Improved Regulatory Process

Our first recommendation is one of improved regulatory process. Last year, the SEC published a Request for Information (RFI) to aid the SEC in developing a national climate disclosure regulation. A review of comments received revealed few, if any, comments by the agricultural and food processing industries, resulting in little to no input by these industries (as many were unaware of the SEC's RFI). A year later, the SEC proposed a rule but provided a relatively short comment period. Even with the 30-day extension, it was challenging for IDFA to understand the 140-page Federal Register notice and 750 complex compound questions, educate our membership, and seek their input. The overwhelming majority of companies that comprise the vast and complex dairy value chain are not accustomed to the SEC as a regulator, making it more challenging for IDFA to provide the SEC with meaningful comments. Smaller dairy suppliers may still be unaware of this proposal despite national news coverage and IDFA's effort to educate its membership.

Although IDFA does not represent the dairy farmers, they are a key part of the dairy supply chain. Dairy farmers expect regulation by the Environmental Protection Agency and other federal Departments, such as the U.S. Departments of Agriculture, Labor and Interior. Demands on farmers through SEC regulation, however, is highly uncommon and we believe will require additional outreach and education by the SEC to ensure the full range of public voices, including food and agricultural businesses, have an opportunity to understand the rule and its impact on agriculture. Equally important, if the SEC finalizes a rule that requires the reporting of Scope 3 GHG emissions, the SEC needs to move beyond its focus on the energy and automotive sector and understand the complexities of the agricultural and food business. Although a 30-day extension was welcomed, if the SEC's goal is to create a reporting system that harmonizes GHG emissions reporting and disclosures, we strongly recommend that the SEC actively engage with the agricultural and food sector and understand the complexities and needs of this fundamental part of the U.S. economy before finalizing any climate disclosure rule.

Importance of Dairy Industry-Led Efforts

To help the SEC understand why IDFA is commenting on this rule, we ask the SEC to consider the impact of voluntary action and existing industry-led market forces. Without direct U.S. regulation, the dairy industry has collectively committed to achieving GHG neutrality by 2050. We invite the SEC to examine efforts and resources by the collective dairy industry found with the Innovation Center for U.S. Dairy and the Stewardship Commitment.[1]

For example, according to the Innovation Center for U.S. Dairy, in 2008, U.S. dairy was the first in the food and agricultural sector to conduct a full life cycle assessment at a national level which

[1] https://www.usdairy.com/about-us/innovation-center/stewardship-commitment

showed it contributes 2 percent of all U.S. GHG emissions. As of 2007, producing a gallon of milk uses 90 percent less land and 65 percent less water, with a 63 percent smaller carbon footprint than in 1944. Thanks to increasingly modern and innovative dairy farming practices, the environmental impact of producing a gallon of milk in 2017 shrunk significantly, requiring 30 percent less water, 21 percent less land and a 19 percent smaller carbon footprint than it did in 2007.[2]

The Innovation Center's work in conjunction with IDFA and its members has also provided important guidance for dairy foods processors on how to measure a company's Scope 1 and 2 GHG emissions consistent with the GHG Protocol. Companies representing approximately 70 percent of milk produced in the U.S. signed the Stewardship Commitment[3], thus committing to transparently demonstrate a positive impact on the environment across the value chain and become carbon neutral by 2050. Importantly, the Stewardship Commitment is aligned with the global accounting and reporting standards such that many dairy processing companies are already measuring Scope 1 and 2 GHG emissions and other environmental metrics and do so based on GHG protocol methods.

Increasingly, dairy companies are making ESG reporting a central part of their business model, anchored by public commitments to measure and report GHG emissions and to report progress on lowering those emissions (and other environmental targets) over time. Some dairy processors have gone further, setting science-based targets demonstrating their commitments and becoming more competitive in the marketplace. IDFA strongly supports those efforts and provides guidance and assistance to help dairy lead in this space.

The drive toward more sustainable food production and processing and more ESG reporting is not only occurring among dairy processors. The dairy farming community is also leading, having developed the voluntary National Dairy Farmers Assuring Responsible Management Environmental Stewardship[4] (FARM ES) reporting tool that monitors and captures reliable on-farm data and enables dairy farmers to report their emissions[5]. We know of no other category within the food and beverage sector that utilizes such a database. Through private investments made by dairy farmers and dairy food companies, in addition to a small amount of USDA funding, dairy farms are expanding their ability to measure and report on-farm GHG emissions. To reach our goals, however, *significant* additional funding is needed in the areas of research and technical assistance to support farmers' efforts to accurately measure emissions and implement climate-smart practices. With funding, incentives and time, the pace of measurement and reporting will increase, as will the rigor and quality of reporting in the dairy farm community. In the meantime, estimating methodologies and emission factors based on the GHG Protocol and other standards are commonly used and accepted across the industry.

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[2] https://www.usdairy.com/sustainability
[3] https://www.usdairy.com/about-us/innovation-center/stewardship-commitment
[4] https://nationaldairyfarm.com/dairy-farm-standards/environmental-stewardship/
[5] The National Milk Producers Federation comments provide more detail on efforts by dairy farmers.

In short, while there is still much work to be done, IDFA members generally believe that the voluntary incentive-based marketplace is already demanding the reporting of GHG emissions alongside efforts to reduce those emissions based on internationally accepted reporting and accounting principles. Efforts by other governmental agencies (that have the appropriate expertise), international efforts, standard-setting organizations, nongovernmental organizations, specific company efforts and public-private partnerships have already demonstrated success in this regard and will continue to do so in the future.

The SEC's Impact on Private Entities

Publicly traded companies registered with the SEC have the legal obligation to comply with the SEC's final rule by disclosing Scope 3 data, but the SEC must fully recognize that the proposal will place the market burden of measuring, reporting and verifying that data on private companies *not* within the SEC's jurisdiction. Finished dairy products, and dairy ingredients used in a multitude of packaged foods, are sold as "purchased goods and services" to retail grocery stores and restaurants for sale to the public. Based on IDFA's review of the filing status of major U.S. retail grocery store chains, almost all are Large, Accelerated and Non-Accelerated Filers that would be required to determine whether Scope 3 GHG emissions from purchased goods and services are "material" as defined in the proposed rule.

Considering that a retail grocery store sells not only dairy products, but other agricultural and finished food products and consumer packaged goods, it is reasonable to conclude for purposes of this comment letter that retailers' Scope 3 emissions would be considered material under the final rule. The retailer would then be required to report and disclose Scope 3 GHG emissions and risks from the entire dairy value chain – which is overwhelmingly comprised of privately owned companies that are outside the scope of this rule.

The market reality is that measuring and reporting of GHG emissions would be a prerequisite for doing business with registrants and most retailers under this proposal. GHG emissions reporting would also be a condition of sale for a significant number of business-to-business operations where dairy ingredients are ultimately sold to a retailer or included in finished products of CPG companies. Finally, the proposal would extend emissions reporting to the key ingredient in all finished dairy products – raw milk – which is produced by the approximately 32,000[6] dairy farms across the nation (more than the approximately 28,000 companies regulated by the SEC[7]). IDFA is deeply concerned that notwithstanding the obvious and consequential financial and marketplace impact on private companies and small businesses outside of the SEC's jurisdiction, the SEC's economic analysis does not consider any costs attributable to the measuring and reporting of Scope 3 emissions, other than costs to the registrant. (87 Fed Reg at 21441-21442) Moreover, we encourage the SEC not to downplay these burdens in assuming that a registrant's Scope 3 GHG emissions could include Scope 1 and 2 emissions of other registered companies in its value chain. While that scenario may be accurate for some industries, it is not so for the dairy

[6] https://downloads.usda.library.cornell.edu/usda-esmis/files/h989r321c/br86bx43m/7p88d932r/mkpr0221.pdf
[7] https://www.sec.gov/about/what-we-do#:~:text=We%20monitor%20the%20activities%20of,%2Ddealers%2C%20and%20securities%20exchanges.

industry. For example, the SEC concludes that standardized reporting practices will ultimately provide cost savings to registrants without considering that cost savings to the registrant may result in additional costs to the supply chain that must measure and report Scope 3 emissions as part of doing business. (87 Fed Reg at 21391)

Burden on the Dairy Processing Industry

As noted above, few dairy processors incurring measuring and reporting expenses would be required by the SEC to report their emissions – instead they would be required to do so by their publicly traded customers that must comply with the SEC rule. The most common reporting platform is the former Carbon Disclosure Project, now CDP[8], which has questionnaires for agricultural and food/beverage/tobacco suppliers. Each customer, however, uses a different variation of the questionnaires, increasing resources needed to respond to customers. IDFA is only aware of a few dairy processing companies providing Task Force for Carbon-Related Financial Disclosures (TCFD) reports to publicly traded customers. With the SEC's effort to align the rule with the TCFD, however, dairy processors would expect more requests for TCFD reports to aid customers with their obligations under a final rule. While there are commonalities between CDP, TCFD and other reporting methods, the methods are not identical and how dairy processors provide information to registrant customers will necessarily change and expand, resulting in more costs to private companies.

For example, one larger privately owned processor with a mature GHG emissions reporting program shared that the company completed 59 sustainability CDP questionnaires in 2021. Completing questionnaires and conducting emissions measurements through an automated GHG measuring program with applicable audits costs the company about $15,000 per year to maintain. This estimate represents a significant increase from prior years because certain customers require TCFD reports, which includes the significant expense of external auditing and a letter of attestation.

Another dairy processor reported not on out-of-pocket expenses, but rather on employee-hours to maintain an automated GHG aggregation and reporting software system. For that privately held company, its mature Scope 1 and 2 reporting programs still resulted in 100-200 resource hours per year. This does not include the $50,000-$75,000 or more that is necessary to periodically hire a 3rd party consultant to review and re-validate the company's internal systems.

Accurately measuring and reporting GHG emissions at a dairy manufacturing plant requires time consuming review of emissions data and invoicing or use of costly automated aggregating software systems that can be validated, requiring a significant capital investment. One company reported that an average automated GHG measuring system would easily cost $250,000 to purchase and set up with on-going costs (licenses, updates) approximately $100,000 annually. For a company that does not have a mature reporting system, the costs would likely be higher, and a company would need several full-time employees to manage the program. A smaller dairy

[8] https://www.cdp.net/en

processor may not have the ability to absorb these capital or compliance costs on the schedule proposed by the SEC, as opposed to a schedule dictated by the marketplace. As a result, smaller dairy processors may be unable to break into (or lose) sales with major registrant retailers, acting as a barrier to entry, and lessening competition.

In short, without careful consideration of how the SEC's proposed rule will add costs throughout the dairy supply chain, IDFA remains concerned that the SEC's proposed rule may make it harder for otherwise thriving, smaller entities in the dairy industry to compete. Furthermore, the dairy processing industry shares the SEC's goal of harmonizing GHG emission data collection and reporting, but we are concerned that the proposal adds more requirements rather than reconciling the various reporting schemes. We ask the SEC to further explain how a final rule would drive shorter term harmonization across the supply chain and mitigate competition concerns.

Recommendations for Increased Scope 3 Flexibility

With the above context in mind, IDFA strongly recommends that any final rule include broad and meaningful Scope 3 reporting flexibilities to ensure that the dairy industry can meet customer demands without losing access to customers and lenders or facing undue burdens not considered by the SEC. IDFA agrees with the SEC that reporting of Scope 3 emissions entails uncertainty and evolving standards that require flexibility so that supply chains can measure and report the emissions data the SEC believes should be disclosed to investors. We therefore strongly urge the SEC to provide as much flexibility as possible in the regulatory text of the final rule. Our key concerns and recommendations:

- Flexibilities in using estimates, emission factors and 3rd party data. IDFA fully supports the proposal to allow the use of estimates, emission factors and third-party data consistent with the GHG Protocol in the reporting of Scope 3 emissions. We also support the use of methods not consistent with the GHG Protocol, so long as the methodology is science based and transparent. We strongly urge the SEC to ensure that that flexibility is included not just in the final rule's preamble, but in the regulatory text. This flexibility is critical because of the inherent limitations and uncertainties of using the GHG Protocol or any method of measuring GHG emissions in the context of land-based activities. Relatedly, we also recommend that the entity providing the measurement (and conducts associated validations and audits) at the farm, cooperative, supplier or processor level have the authority to determine whether the estimating methodology or emission factor is accurate, appropriate and in compliance with the GHG Protocol or another standard.

  Flexibility is also necessary because the nature of food production and ingredient suppliers makes measuring and reporting Scope 3 emissions particularly complicated and the use of estimates and emissions factors necessary. Arguably, every ingredient that goes into a finished dairy product would need to be included in the Scope 3 emissions disclosure under the proposed rule. In making dairy foods processors must often change ingredient suppliers (particularly with on-going supply chain challenges), further justifying the need to utilize estimated emissions data and emissions factors. Notwithstanding this flexibility, IDFA members are concerned that Scope 3 reporting would be particularly burdensome and complex for some dairy manufacturers because of the large number of flavorings and inclusions used for the many varieties of products such as ice cream. Furthermore, some substances used in dairy processing are incidental food additives that are present at insignificant levels and don't have any technical or functional effect in the finished food and therefore do not appear on the final food's ingredient disclosure statement (21 CFR Section 101(3)). IDFA asks the SEC to clarify whether incidental additives and processing aids must be included in Scope 3 emissions and why would substances used in such minute quantities be "material."

- Expanded safe harbor. We fully support the SEC's proposal to provide registrants with a safe harbor for Scope 3 emissions disclosures; however, IDFA believes that a broader safe harbor is necessary. A registrant that has identified a legal risk in reporting Scope 3 emissions will inevitably seek to mitigate that risk through its contracts with its Tier 1 suppliers, such as dairy processors. This is because a retailer purchasing dairy products from a dairy processor generally does not have a direct contractual relationship with the individual dairy farmer and other suppliers to the dairy processor.

  We ask that the SEC further broaden the safe harbor to ensure that registrants' concerns about liability for inaccurate measurements do not result in indemnity requirements or contractual liability to suppliers. Specially, we ask the SEC to remove the requirement that a registrant make or reaffirm Scope 3 reporting with a "reasonable basis", leaving the focus solely on "good faith." Furthermore, we ask that the SEC require plaintiffs alleging fraud, bad faith or unreasonable basis do so with particularity to avoid second-guessing of otherwise transparent methods used to make estimates and determine emission factors[9]. We also suggest that the SEC ensure that registrants would not be held liable for alleged misstatements on prior filings due to the nature of continually evolving GHG standards, such forthcoming GHG Protocol land-based guidance. Without a strong safe harbor, the flexibility proposed by the SEC, and necessary for the dairy industry, will be undermined by legal risk to entities regulated by the SEC.

- Further extended compliance dates. IDFA recommends that the SEC extend the deadline for five additional years for each registrant category. The two-year compliance deadline is not realistically two calendar or fiscal years. Registrants preparing their filings need many months of lead time to collect data from their supply chain, as do dairy companies. Many registrants also collect their supply chain emissions data based on certain schedules that may not align with the SEC's reporting requirements. If the final disclosure rule is finalized December 2022, dairy companies selling products four of the largest retail grocery chains (all Large Accelerated filers) would need to begin the reporting and

[9] This recommendation also ties into the request above that the entity providing the measurement at the farm, cooperative, supplier or processor level have the authority to determine whether the estimating methodology or emission factor is accurate, appropriate and in compliance with the GHG Protocol or another standard.

validation process almost immediately after publication of the rule. For dairy companies and other Scope 3 suppliers not currently measuring and reporting GHG emissions data, the SEC's proposed two-year compliance deadline is too short. Even with the flexibility of estimates and emissions factors, it takes time to make investments in the requisite technology, training, hiring, additional employees and contracting third-party auditing.

Additional compliance time is also needed because key guidance necessary for measuring and reporting Scope 3 GHG emissions reporting within the dairy and larger agricultural value chain has not been finalized and is not expected to be made available to the public until the end of 2022. The GHG Protocol is in final stages of developing new Land Sector and Removals Guidance[10] that will be key to the dairy value chain's ability to measure and report key land-based activities: land use, land use change, CO2 removals and storage and biogenic products. This guidance is important because it will help the dairy and agricultural value chain report the GHG emissions and removals such as carbon sequestration and bioenergy feedstock production, livestock emissions, and soil emissions. The guidance will also be important in defining the use of offsets and insets. As of this writing, however, the draft guidance has not been released and will require time to review and incorporate into future planning and practice.

IDFA recommends that the SEC extend the deadline for five additional years for each registrant category. This time would allow registrants and processors sufficient time to understand the technology and resourcing needs to meet registrant requirements. It would also allow processors much needed to time to ensure their own Scope 3 boundaries can provide the actual or estimated data sought by customers with regulatory obligations.

- Small businesses. Many major retailers reserve shelf and bin space for small businesses and local artisan food products, providing small companies and local farmers and processors with market exposure and retail sales. IDFA is concerned that small businesses lack the technical expertise and financial resources to measure and report their GHG emissions (no matter how small) with sufficient rigor to comply with widely accepted reporting frameworks demanded of their customers, which may lessen competition. However, it is SEC policy to promote, not hinder competition. This rule should not serve as a barrier to entry into retail markets or create competitive disadvantages in the marketplace.

With this comment letter, IDFA aims to inform the SEC about the dairy products marketplace, the leadership of our industry, and our commitments, successes, and challenges in reducing our individual and collective GHG footprint.

While we appreciate the SEC's efforts to provide flexibility for reporting Scope 3 GHG emissions, we have raised weaknesses in the proposal that challenge our industry's ability to comply with the proposed regulatory requirements aimed at our customers. First is the lack of engagement with the dairy value chain, which is not traditionally regulated by the SEC and

[10] https://ghgprotocol.org/land-sector-and-removals-guidance

therefore not educated enough about SEC regulation and its far-reaching consequences. Second, the proposal has no analysis of the economic and market effects on privately held and small entities that would be directly impacted (albeit not regulated) by this rule and would likely face contractual legal obligations to ensure registrants will be able to meet the SEC's stringent compliance requirements. Third, we are concerned that the SEC proposal adds more requirements rather than reconciling the various GHG reporting schemes. Additionally, IDFA seeks additional guidance on the reporting of emissions data from suppliers of flavorings and inclusions and whether incidental additives/processing aids must also be included with Scope 3 reports. Fourth, the SEC's proposed compliance timeline is unattainable. Further, IDFA is concerned that small and some medium-sized businesses lack the technical expertise and financial resources to measure and report their GHG emissions, especially in the condensed timeline required by the proposed rule. We suspect that the proposed SEC rule will act as a barrier to entry for some, especially smaller companies.

With this narrow and incomplete focus, the SEC missed important opportunities to improve flexibilities that would help companies to measure and report climate emissions data, and ultimately achieve the climate emissions reduction goals we collectively share. IDFA would be pleased to conduct further discussions with the SEC to help the SEC understand the dairy and foods sector and ultimately make the Climate Disclosure Rule a workable rule.

Regards,

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