

June 15, 2022

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **File No. S7-10-22**
The Enhancement and Standardization of Climate-Related Disclosures for Investors
Release Nos. 33-11042 and 34-94478

Dear Ms. Countryman:

Stradley Ronon Stevens & Young, LLP appreciates the opportunity to comment on the Securities and Exchange Commission's (the "Commission") proposed enhancements to disclosure related to certain climate-related information ("Proposed Rulemaking").¹ We are writing at the request of one of our clients, the independent directors of a business development company ("BDC") that would be subject to the Proposed Rulemaking, if adopted as proposed.

The focus of this comment letter is solely on the appropriateness of including BDCs in the scope of the Proposed Rulemaking. The Proposed Rulemaking, as presently drafted, would apply not only to "operating companies" (i.e., companies with ongoing primary business activities other than the investing, reinvesting, owning, holding, or trading of securities), but also to investment companies that have elected to be regulated as BDCs under the Investment Company Act of 1940.² The Commission has solicited comments as to whether "business development companies... should be excluded from all or some of the proposed climate-related disclosure rules".³

Our client submits that BDCs should be excluded entirely from the Proposed Rulemaking, and instead should be considered solely within the scope of the parallel proposed rulemaking related

¹ The Enhancement and Standardization of Climate-Related Disclosures for Investors, SEC Rel Nos Nos 33-11042 and 34-94478 (March 21, 2022) ("Release")

² See Release at footnote 699 and accompanying text.

³ See Release at p. 278 (Request for Comment 175)

to environmental, social and governance factors of investment funds that the Commission issued on May 25, 2022.⁴

Although, operating companies and BDCs share the same disclosure framework under the Securities Exchange Act of 1934 and the Securities Act of 1933, BDCs are far more similar to registered investment companies, and should be treated as such. BDCs – as is the case with registered investment companies – are typically externally managed investment companies whose business activity is the investing, reinvesting, owning, holding, or trading of securities and other investments.⁵ As such a BDC’s business operations are far more equivalent to those of a mutual fund than they are to those of an operating company.

The Proposed Rulemaking (if adopted) would require BDCs to attempt to comply with a disclosure framework that is clearly intended for companies with direct, non-investment operations and internal management. This disclosure approach would require BDCs to force their own circumstances into a disclosure approach that was not designed with their particular considerations in mind, and could potentially create significant costs for the BDCs and their shareholders without necessarily delivering the same benefits identified by the Commission applicable to operating companies. (The difficulty of determining the cost/benefit trade-off is further compounded by the fact that the Release’s Economic Analysis section does not expressly address BDCs, and is entirely silent on any special benefits flowing to or special costs borne by BDCs.) Furthermore, climate risk is one of many potential investment risks that investment companies face. The proposed governance procedures – with their exclusive focus on climate risk – could require BDCs to place a disproportionate emphasis on disclosure related to the board’s focus on climate risk, which could have the effect of artificially emphasizing disclosure related to climate risk while effectively deemphasizing disclosure of other, more material investment risks faced by BDCs. This differential disclosure regime would also make it more difficult for investors to compare BDCs to other investment companies that would not be subject to similar disclosure obligations.

We believe that the potential problems created by applying the Proposed Rulemaking to BDCs would be addressed by excluding BDCs from the scope of the Proposed Rulemaking and considering them instead solely within the scope of the Proposed Fund Rule. In our view, the Proposed Fund Rule has allowed the Commission to tap its Division of Investment Management’s subject matter expertise regarding investment companies (and BDCs in particular) and provides a better framework for the public to comment on BDCs and the disclosures that would be most appropriate to them. Subjecting BDCs solely to consideration within the scope of the Proposed Fund Rule instead of also subjecting them to the Proposed Rulemaking would also allow BDCs and their boards to appropriately consider and comment on the applicability of rules expressly designed for their particular circumstances. Including BDCs solely within the scope of the Proposed Fund Rule would also allow BDCs to operate on equal

⁴ Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social and Governance Investment Practices, SEC Rel. No. IC-34594 (May 25, 2022) (the “Proposed Fund Rule”).

⁵ See Section 3(a)(1) and (2) under the 1940 Act. Most BDCs are externally managed and have no direct employees or physical facilities, relying instead on its investment adviser or other service providers for both personnel and physical operations.

footing with other, registered investment companies, thus ensuring the ability of investors to evaluate the investment risks of BDCs on a side-by-side basis with other pooled investment vehicles.

For these reasons, we respectfully suggest the removal of BDCs from the coverage of the Proposed Rulemaking.

* * * * *

Thank you for considering our comments. If you have questions, please contact me at the email or telephone number above.

Very truly yours,



Eric S. Purple

CC: The Honorable Gary Gensler
The Honorable Hester M. Peirce
The Honorable Allison Herren Lee
The Honorable Caroline A. Crenshaw

William Birdthistle, Director
Division of Investment Management

Renee Jones, Director
Division of Corporation Finance