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Via Email

Ms. Vanessa Countryman,
Secretary,
U.S. Securities and Exchange Commission,
100 F Street,
Washington, DC 20549-1090,
United States.

June 17, 2022

Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors (File No. S7-10-22)

Dear Ms. Countryman:

We appreciate the opportunity to respond to the recently proposed rules of the U.S. Securities and Exchange Commission (the “SEC”) on *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (Release Nos. 33-11042; 34-94478; File No. S7-10-22) (the “Proposed Rules”).

BCE Inc. (“BCE”), Rogers Communications Inc. (“RCI”) and TELUS Corporation (“TELUS”) are Canadian corporations and are the largest communications service providers in Canada. BCE, RCI and TELUS are also foreign private issuers (“FPIs”) listed on the New York Stock Exchange and subject to U.S. periodic reporting requirements under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Further, BCE, RCI and TELUS are participants in the SEC’s multijurisdictional disclosure system (“MJDS”) for Canadian issuers, which allows eligible Canadian issuers, such as BCE, RCI and TELUS, to register securities under the U.S. Securities Act of 1933, as amended (the “Securities Act”) and to register securities and satisfy their reporting obligations under the Exchange Act by use of documents prepared largely in accordance with Canadian requirements. As MJDS registrants, BCE, RCI and TELUS satisfy their reporting obligations under the Exchange Act by filing their respective annual reports on Form 40-F and other documents under cover of Form 6-K.

We note that the Proposed Rules did not contemplate any amendments to the current Form 40-F disclosure requirements. However, the SEC specifically requested comment on whether MJDS registrants should be required to include the same climate change-

related disclosures in their annual reports on Form 40-F as would be required for U.S. domestic registrants for their annual reports on Form 10-K or for non-MJDS FPIs for their annual reports on Form 20-F.

Since the adoption by the SEC of the MJDS, MJDS registrants have been deemed to comply with the requirements of Regulation 13A pursuant to Rule 13a-3 (§ 240.13a-3 (*Reporting by Form 40-F Registrant*)). Rule 13a-3 has been effective since July 1, 1991 and was adopted in connection with the implementation of the MJDS framework. Rule 13a-3 specifies that “[a] registrant that is eligible to use Forms 40-F and 6-K and files reports in accordance therewith shall be deemed to satisfy the requirements of Regulation 13A (§§ 240.13a-1 through 240.13a-17 of this chapter).” The SEC’s regulations would otherwise require MJDS registrants to comply with the SEC’s prescriptive disclosure requirements in accordance with the applicable SEC’s form requirements (*e.g.*, annual reports on Form 20-F for FPIs). The SEC noted in its decision to adopt MJDS that:

Canada was chosen as the first partner for the United States in part because of the similarities between the U.S. and Canadian investor protection mandates and disclosure requirements. The existence of a well-developed, sophisticated and reliable system of administering Canadian disclosure requirements also was critical, given the Commission’s reliance on Canadian definitions, procedures, application of disclosure standards, and day-to-day administration of those standards.¹

The MJDS framework appropriately treats the Canadian reporting framework as substantially equivalent to that of the SEC, avoids duplicative and overlapping reporting obligations, and acknowledges that Canadian reporting requirements are sufficient for investors in the United States. We note that MJDS forms will continue to specify that an MJDS registrant must include information in its filings such that its disclosures do not contain material misstatements or omissions.² As further described below, we firmly believe that the existing disclosure framework for MJDS registrants is sufficient to inform U.S. investors of material information about climate change risks, climate change governance, greenhouse gas emissions and the other matters addressed in the Proposed Rules. In addition, we note the parallel process underway in Canada to implement a specific climate-change reporting framework addressing many of the areas highlighted in the Proposed Rules.

¹ SEC Release No. 33-6879, 55 Fed. Reg. 46,288, 46,288–89 (Nov. 2, 1990).

² *See, e.g.*, General Instruction D(5) to Form 40-F (specifying that Rule 12b-20 applies for reports filed on such form).

Accordingly, we strongly support the SEC’s approach of not amending Form 40-F in the Proposed Rules.³ Imposing prescriptive reporting requirements on MJDS registrants with respect to climate change matters would be completely inconsistent with the fundamental principles of the MJDS. Extending these new climate change-related disclosure requirements to MJDS registrants would result in an unnecessary and inefficient incremental burden for registrants already subject to a robust reporting regime in Canada, exactly the situation that MJDS was designed to avoid. Consistent with the SEC’s existing approach to disclosure requirements, we support excluding MJDS registrants from the scope of the Proposed Rules. MJDS registrants would continue to file annual reports on Form 40-F consistent with past practice and furnish information on Form 6-K to the extent required under the existing MJDS disclosure framework.

We would note that the Canadian Securities Administrators (the “CSA”) are already in the process of implementing a specific climate change disclosure framework. In October 2021, the CSA proposed National Instrument 51-107–Disclosure of Climate-related Matters (the “CSA Proposed Instrument”),⁴ which was subject to a public comment and consultation period that ended in February 2022. However, the CSA has made clear that existing disclosure obligations already require climate-related information to be included in filings if material to investors.⁵

Assuming that the CSA Proposed Instrument is implemented prior to the end of 2022, it is expected to require in-scope issuers to provide the required climate-change related disclosures beginning with annual filings due in 2024 (with respect to the fiscal year

³ The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21334 (Apr. 11, 2022) (to be codified at 17 C.F.R. pt. 210, 229, 232, 239, and 249) (the “Proposing Release”), at 21409 (“181. We have not proposed to amend Form 40–F, the Exchange Act form used by a Canadian issuer eligible to report under the Multijurisdictional Disclosure System (“MJDS”) to register securities or to file its annual report under the Exchange Act, to include the proposed climate-related disclosure requirements. Should we require a Form 40–F issuer to comply with the Commission’s proposed climate-related disclosure requirements? Should we permit a MJDS issuer to comply with Canadian climate-related disclosure requirements instead of the proposed rules if they meet certain conditions or provide certain additional disclosures and, if so, which conditions or disclosures?”).

⁴ CSA, *Consultation Climate-related Disclosure Update and CSA Notice and Request for Comment Proposed National Instrument 51-107 Disclosure of Climate-related Matters* (Oct. 18, 2021) (the “CSA Proposing Release”).

⁵ CSA Proposing Release at 53 (“Current securities legislation in Canada requires disclosure of certain climate-related information in an issuer’s regulatory filings, if such information is material. Please refer to the CSA Staff Notice 51-358, *Reporting of Climate Change-related Risks* (Aug. 1, 2019), available at https://www.osc.ca/sites/default/files/pdfs/irps/csa_20190801_51-358_reporting-of-climate-change-related-risks.pdf, for an overview of existing requirements that currently apply to the disclosure of climate-related risks and risk management and oversight.”).

ended December 31, 2023), which is a similar implementation timeline as that under consideration in the Proposed Rules.⁶

Significantly, both the CSA Proposed Instrument and the Proposed Rules are modeled on the recommendations from the Task Force on Climate-related Financial Disclosures (the “TCFD”). The TCFD was established in 2015 by the Financial Stability Board to develop recommendations on the types of climate change-related information that companies should disclose to support investors, lenders, and insurance underwriters in appropriately assessing and pricing climate change related risks. The TCFD released its final recommendations on climate-related financial disclosures in June 2017, organized around the four core elements of governance, strategy, risk management, and metrics and targets. We support the work of the TCFD and note that each of our organizations currently discloses climate-related information that is aligned with the TCFD’s recommendations. BCE, RCI and TELUS also each report extensively on progress with respect to environmental, social and governance objectives through their respective annual reporting.

Furthermore, the CSA noted that the disclosure framework described in the CSA Proposed Instrument “reflects the growing international convergence around the TCFD recommendations”.⁷ The SEC has similarly acknowledged that the TCFD framework was the inspiration for the Proposed Rules, with the SEC stating that a “globally recognized framework should help elicit climate-related disclosures that are consistent, comparable and reliable.”⁸

If the SEC were to deviate from the approach set forth in the Proposed Rules and seek to apply the new disclosure requirements to MJDS registrants, then MJDS registrants would need to comply with both the climate disclosure requirements of the CSA as well as those under the Proposed Rules, with corresponding costs and inefficiencies. Given that the existing (and proposed) disclosure framework in Canada provides adequate information to investors and that the CSA Proposed Instrument will, similar to the Proposed Rules, provide for an extensive disclosure framework modeled on recommendations from the TCFD, such an incremental burden on MJDS registrants is completely unwarranted. We also believe that extending the Proposed Rule to MJDS registrants would be counterproductive from the perspective of investor protection, creating the risk of overlapping or inconsistent disclosures across markets and resulting investor confusion.

⁶ CSA, Proposing Release at 3, 9 and 15 (“Assuming the Proposed Instrument comes into force December 31, 2022 and an issuer has a December 31 year-end, these disclosures would be included in annual filings due in 2024 and 2026 for non-venture issuers and venture issuers, respectively.”).

⁷ CSA Proposing Release at 12.

⁸ Proposing Release at 21347.

In the event the SEC were to extend the new disclosure requirements to MJDS registrants, we believe this would raise serious concerns from a comity and reciprocity perspective. The CSA Proposed Instrument expressly provides that the disclosure requirements in the CSA Proposed Instrument would not apply to reporting issuers that are “SEC foreign issuers.”⁹ If the SEC fails to adopt similar reciprocity, this would impose an unfair and unwarranted disadvantage on MJDS registrants as compared to U.S. issuers that are also reporting issuers in Canada.

In addition, in the interests of global harmonization, we would recommend that the SEC seek to more closely align the Proposed Rules with the TCFD framework in all respects, and that the SEC implement the “comply or explain” approach selected by a number of jurisdictions that have introduced requirements based on the TCFD framework. For example, we understand that TCFD-aligned disclosure requirements that have been proposed or adopted in a number of jurisdictions (such as Singapore¹⁰ and New Zealand¹¹ as well as other jurisdictions) permit¹², and that U.S. issuers’ TCFD-aligned reporting often follow, the “comply or explain” approach whereby issuers either “comply” by disclosing the specified information or “explain” particular areas where such disclosure is not warranted. We are strongly of the view that this approach more appropriately

⁹ CSA Proposing Release, Part 1, Section 2. “SEC foreign issuer” means “a foreign reporting issuer that (a) has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act; and (b) is not registered or required to be registered as an investment company under the Investment Company Act of 1940 of the United States of America, as amended.” See Canadian Sec. Admin, *National Instrument: NI – 71-102 – Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (June 20, 2003).

¹⁰ SGX, *Sustainability Reporting*, available at <https://www.sgx.com/regulation/sustainability-reporting>.

¹¹ New Zealand Government Press Release of September 15, 2020, available at <https://www.beehive.govt.nz/release/new-zealand-first-world-require-climate-risk-reporting>.

¹² The TCFD’s Final Recommendations of 2017 includes a select list of disclosure frameworks implementing the “comply or explain” approach. This list includes jurisdictions, such as, Australia, Brazil, Singapore and South Africa; see TCFD, *Recommendations of the Task Force on Climate-related Financial Disclosures* (June 2017) at 57 and 58, available at <https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf>. The TCFD Status Report of 2021 sets out a list of jurisdictions that have announced TCFD-aligned official reporting requirements (on a mandatory or “comply or explain” basis) as of September 2021, including Brazil, the EU, Hong Kong, Japan, New Zealand, Singapore, Switzerland and the United Kingdom. We understand that three of those jurisdictions (Singapore, the United Kingdom and New Zealand) opted for the “comply or explain” approach (in the case of the United Kingdom this approach was implemented on a temporary basis for large companies and financial institutions, pending further study and consultation); see TCFD, *Task Force on Climate-related Financial Disclosures 2021 Status Report* (October 2021) at 5, available at https://assets.bbhub.io/company/sites/60/2021/07/2021-TCFD-Status_Report.pdf.

balances investors' need for decision-useful disclosure and the risk of a flood of unnecessary disclosure of immaterial information.

Finally, we do not believe that the incremental disclosure requirements under the Proposed Rules as compared to the TCFD recommendations (for example, disclosure around board expertise, additional granular information on physical risks by ZIP code, disclosure of emissions by type of gas, etc.) are necessary. Instead, these incremental disclosure requirements would run contrary the goal of ensuring that investors globally are provided with "consistent, comparable and reliable" disclosures on climate change matters.

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We thank you for the opportunity to provide our views on the Proposed Rules. In response to the SEC's request for comment, we confirm that no prescriptive climate change-related disclosure requirements should be required for MJDS registrants filing their annual reports on Form 40-F.

Very truly yours,

BCE Inc.



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Executive Vice-President,
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