

June 17, 2022

BY EMAIL

U.S. Securities and Exchange Commission
c/o Ms. Vanessa Countryman, Secretary

Email: rule-comments@sec.gov

Dear Ms. Countryman:

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

Thank you for the opportunity to provide our views with respect to the 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**”).

We are counsel to many Canadian issuers who are participants in the SEC’s multijurisdictional disclosure system (“**MJDS**”). MJDS is critical to reducing unnecessary regulatory burden for these and other eligible Canadian issuers by allowing them to satisfy their reporting obligations under the Securities Exchange Act of 1934, as amended (the “**U.S. Exchange Act**”), and to register securities under the U.S. Securities Act of 1933, as amended (the “**U.S. Securities Act**”), in each case by use of documents prepared based on Canadian requirements. Without MJDS, the SEC’s regulations would otherwise require MJDS issuers to comply with the U.S. disclosure requirements notwithstanding they already provide corresponding disclosure (pursuant to their Canadian continuous disclosure obligations) that is sufficient from an investor protection perspective.

We note that the Proposed Rules do not propose to amend Form 40–F, or other MJDS forms used by MJDS eligible Canadian issuers, to include any of its proposed climate-related disclosure requirements. However, the SEC specifically requested comment on whether MJDS issuers should be required to comply with some or all of the SEC’s proposed climate-related disclosures or be exempt from providing those disclosures only upon meeting certain conditions. In our view, MJDS issuers should continue to be permitted to satisfy their U.S. disclosure obligations with respect to climate-related disclosure under the U.S. Exchange Act and the U.S. Securities Act, as applicable, by complying with applicable Canadian requirements (instead of the Proposed Rules). Imposing any or all of the disclosure requirements contained in the Proposed Rules on MJDS issuers would fail to recognize the fundamental principles of the MJDS framework, and could result in a substantial reporting burden on

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Canadian issuers that is entirely unnecessary for investor protection and that may conflict with their Canadian reporting obligations. Moreover, this may result in investor confusion due to overlapping or inconsistent disclosure requirements between the U.S. and Canadian markets.

Since its adoption by the SEC, the MJDS framework has acknowledged that disclosure prescribed by applicable Canadian securities legislation is sufficient to inform the investment decisions of U.S. investors with respect to MJDS issuers' securities. For decades, this framework has allowed eligible Canadian issuers to satisfy their U.S. reporting obligations with their Canadian continuous disclosure and register U.S. public offerings of their securities using a MJDS registration form that contains a prospectus prepared based on Canadian requirements. For the reasons noted below, we believe that Canadian disclosure requirements with respect to climate-related risks and governance are and will continue to be sufficient to provide investors the material facts necessary to inform their investment decisions. Accordingly, we see no reason for the SEC to diverge from the MJDS framework, whether in the context of climate-related disclosures or otherwise.

Current Canadian securities legislation already requires disclosure of material climate related risks and an issuer's management of those risks as well as other climate-related information to the extent that information is material to an investment decision with respect to an issuer's securities. Moreover, on October 18, 2021, the Canadian Securities Administrators (the "**CSA**") proposed a specific climate-related disclosure framework in proposed National Instrument 51-107 *Disclosure of Climate-related Matters* (the "**CSA Proposed Instrument**")¹. Critically, like the Proposed Rules, the CSA Proposed Instrument is modeled on the recommendations from the Task Force on Climate-related Financial Disclosures, subject to certain modifications. Assuming that the CSA Proposed Instrument becomes effective prior to the end of 2022, it is expected to require Canadian issuers that are listed or quoted on a U.S. marketplace (among others) to first provide the required climate-related disclosures in their annual filings for the fiscal year ended December 31, 2023. The CSA has expressed confidence in the CSA Proposed Instrument's ability to provide investors with useful climate-related information, and to facilitate what the CSA describes as the Canadian market's transition towards international standards. In that regard, the CSA has confirmed that it will continue to monitor international developments, such as the International Sustainability Standards Board's recently released draft climate disclosure standards, and that such international developments will inform the CSA's approach to mandatory climate disclosure, including the anticipated movement towards a global baseline for such disclosures.

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We again thank you for the opportunity to provide our views on the Proposed Rules. In response to the SEC's request for comment, we reiterate our view that no MJDS issuers should be required to comply with the Proposed Rules and that all MJDS issuers should be permitted to continue to satisfy their U.S. disclosure obligations with respect to climate-related disclosure by complying with applicable Canadian disclosure requirements.

¹ See CSA Consultation Climate-related Disclosure Update and CSA Notice and Request for Comment Proposed National Instrument 51-107 *Disclosure of Climate-related Matters*.

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The following lawyers at our firm participated in the preparation of this comment letter and may be contacted directly should you have any questions regarding our submissions.

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