ASSOCIATION DES BANQUIERS CANADIENS CANADIAN BANKERS ASSOCIATION

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[redacted]

June 17, 2022

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

Send to: rule-comments@sec.gov

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

Dear Ms. Countryman:

The Canadian Bankers Association ("CBA") welcomes the opportunity to comment on the recently proposed rules of the U.S. Securities and Exchange Commission ("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").

The CBA is a professional industry association that provides information, advocacy education and operational support services to its membership of more than 60 domestic and foreign banks operating in Canada. The CBA provides governments and others with a centralized contact for matters relating to banking in Canada, and advocates for public policies that contribute to a sound, thriving banking system to ensure Canadians can succeed in their financial goals.

A number of the CBA's members are foreign private issuers ("FPIs") listed on national securities exchanges in the United States and are eligible to register securities and satisfy their reporting obligations under U.S. securities laws under the reciprocal U.S.-Canadian multijurisdictional disclosure system ("MJDS") adopted by the SEC and the Canadian Securities Administrators ("CSA"). The SEC's MJDS allows eligible Canadian registrants 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 Securities Exchange Act of 1934, as amended (the "Exchange Act"), by the use of documents prepared largely in accordance with Canadian requirements.

Sustainability—including environmental, social and governance ("ESG")—is a key part of our members' social responsibility efforts. Canada's banks are actively defining and exemplifying best practices in ESG in Canada. They have been leading climate change and sustainable finance efforts in both the legislated and voluntary Canadian climate change regimes and are active in the international context. Over the last decade, our members have participated in the development of Canadian climate change sustainability disclosure guidance and currently participate in the Canadian government's Sustainable Finance Action Council. Our members have also established and implemented ESG policies, goals and practices, and are working diligently to measure, monitor, report and address the impact of climate change. Several of our members were among the early banks to join the Glasgow Financial Alliance for Net Zero (the "GFANZ"). The six largest banks in Canada, all of which are our members and five of which are MJDS registrants ("MJDS Registrants"), have joined the United Nations Net-Zero Banking Alliance (the "NZBA") and have publicly announced their ambition to achieve net-zero greenhouse gas ("GHG") emissions by 2050. More broadly, many CBA members also have made voluntary climate-related disclosures generally consistent with the recommendations of the Task Force on Climate-related Financial Disclosures ("TCFD") for a number of years.

We strongly align with the SEC's stated goal in the Proposed Rules of providing investors "information about a registrant's climate-related risks that are reasonably likely to have a material impact on its business, results of operations, or financial condition" that is "consistent, comparable, and reliable—and therefore decision-useful—information."[1]

We believe that a mandatory climate disclosure regime that is reflective of the applicable international legislative, regulatory and investment context and is grounded in a materiality-based approach consistent with the TCFD framework would improve information and data availability and quality, foster comparability and usefulness of climate-related disclosures and provide clarity to registrants on their climate-related reporting obligations in the United States. We respectfully request that the SEC finalize its Proposed Rules in a manner that is harmonized and consistent with converging international climate-related disclosure standards, including the TCFD and the International Sustainability Standards Board's ("ISSB") proposed disclosure standards, in order to make comparisons consistent and avoid inconsistencies and other unintended consequences for entities providing climate-related disclosures in multiple jurisdictions.

I. Executive Summary—Key Themes

We provide our views on a few key issues, which we hope will assist the SEC in its finalization of its climate disclosure rules. As discussed in greater detail below in this letter and the schedules attached hereto, the CBA and its members:

- endorse the Proposed Rules' exclusion of Form 40-F—a form used by Canadian MJDS Registrants to register securities and file annual reports under U.S. securities laws—as well as the exclusion of other SEC forms solely eligible to be used by MJDS Registrants (e.g., Form F-7, F-8, F-10 or F-80) from the climate-related disclosure requirements (referred to below as the "MJDS Exclusion"), and, consistent with the MJDS Exclusion, urge the SEC to clarify that MJDS Registrants would not be required to make climate-related disclosure (including intra-year updates) on Form 6-K unless Canadian requirements mandate such disclosure;

- encourage the SEC to harmonize its rules with internationally recognized climate-related disclosure standards;

- recommend the SEC to take a materiality-based approach to climate-related disclosure;

- urge the SEC to modify its implementation approach and timeline, especially if the MJDS Exclusion were to be removed from the final SEC rules; and

- present additional, specific recommendations in Schedule 2 (Detailed Recommendations to Enhance the Proposed Rules), which are an integral part of our overall package of suggestions for the SEC, to enhance the effectiveness of the SEC's climate-related disclosure framework.

II. Strong Support for the MJDS Exclusion

We strongly agree with the proposed MJDS Exclusion (including the SEC's proposal not to amend Form 40-F to include the climate-related disclosure requirements under the Proposed Rules) and request that the same approach be taken in the final SEC rules.[2]

The MJDS Exclusion is consistent with the purpose of the MJDS as well as the SEC's historical approach with respect to MJDS Registrants. Effective July 1, 1991, the SEC and CSA adopted the MJDS for U.S. and Canadian registrants to enhance the efficiency of multinational capital-raising

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[1] *See* SEC, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Release Nos. 33-11042; 34-94478; File No. S7-10-22 at 1 and 7 (Mar. 21, 2022) (the "Proposing Release").

[2] *See* Proposing Release at 279.

through a hybrid of the mutual recognition approach and the harmonization approach.[3] In his opening statement on the adoption of the MJDS, then-SEC Chairman Richard C. Breeden noted that "[while specific disclosure requirements of the United States and Canada differ in detail, the regulatory systems share the common purpose of ensuring that investors are given information adequate to make an informed investment decision" and that the MJDS "represents in a sense reciprocity based on quality of reporting and disclosure."[4]

As noted above, the SEC's MJDS allows eligible Canadian registrants to register securities under 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. For Canadian MJDS banks, Canadian requirements include the applicable requirements of the CSA, as well as those imposed by the Office of the Superintendent of Financial Institutions ("OSFI") and the Bank of Canada.[5] The SEC's proposed MJDS Exclusion is appropriate in light of Canada's robust climate-related legislation and regulation and avoids unintended conflicts with climate-related disclosure standards that have been and continue to be promulgated in Canada, including the CSA's National Instrument 51-107 – Disclosure of Climate-related Matters (the "CSA Proposed Instrument") and the OSFI's draft Guideline B-15: Climate Risk Management ("Guideline B-15").[6] See Schedule 1 (Summary of Canada's Ongoing Efforts to Enhance Climate-Related Disclosures) below for additional details on Canada's climate-related legislation, regulations and initiatives.

In light of Canada's ongoing efforts to enhance TCFD-aligned climate disclosures across the Canadian economy,[7] disclosure documents complying with Canada's climate-related disclosure requirements should not prejudice U.S. investors and should instead provide them with decision-useful, climate-related disclosures consistent with Canada's overall climate-related legislative and regulatory efforts. This is particularly true considering that the shared foundational frameworks underlying the U.S. and Canadian climate disclosure regimes are already widely accepted by investors globally, including in the United States and Canada.[8] Similarly, guidance on assessing climate-related financial disclosures should educate and inform investors to consider such disclosures in the overarching economic context of the reporting entity, which may differ widely among resource and knowledge based economies.

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3 SEC, *Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuers (revised proposed rules, forms and schedules proposed revisions to rules and forms and request for comment)*, 55 Fed. Reg. 46288, 46288-46289 (Nov. 2, 1990).

4 Richard C. Breeden, SEC Chairman, *Opening Statement on Adoption of Rules, Forms and Schedules for Multijurisdictional Disclosure with Canada at Open Meeting* (May 30, 1991).

5 *See* SEC, *Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuers*, Exchange Act Release No. 22-6902 (July 1, 1991).

6 *See* Canadian Sec. Admin., CSA Staff Notice, *Environmental Reporting Guidance*, CSA NI-51-333, NI-51-35 (Oct. 27, 2010), *available at* https://www.osc.ca/sites/default/files/pdfs/irps/csa_20101027_51-333_environmental-reporting.pdf. *See also*, Canadian Sec. Admin., *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) ("CSA Proposing Release"); and OSFI, Draft Guideline, *Guideline B-15: Climate Risk Management* (May 26, 2022); *available at https://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/b15-dft.aspx#toc1*.

7 Canada has also taken a leadership role in global standards harmonization through the establishment of an ISSB office in Montreal. *See* IFRS Foundation takes next steps to establish ISSB presence in Montreal (April 6, 2022), *available at* https://www.ifrs.org/news-and-events/news/2022/04/ifrs-foundation-takes-next-steps-to-establish-issb-presence-in-montreal/.

8 *See* Proposing Release, at 37 (noting that "the TCFD framework has been widely endorsed by U.S. companies and regulators and standard-setters around the world"); Proposing Release at 36 (noting that, as of October 2021, more than 2,600 organizations globally, with a total market capitalization of $25 trillion, and 1,069 financial institutions, managing assets of $194 trillion, support the TCFD); Proposing Release at 48 ("The TCFD framework has been widely accepted by issuers, investors, and other market participants").

Consistent with the MJDS Exclusion, we urge the SEC to clarify that, if the Form 6-K were amended as proposed,[9] MJDS Registrants would not be required to make climate-related disclosure (including intra-year updates) on Form 6-K unless Canadian requirements mandate such disclosure. Without this clarification, it is unclear whether the MJDS Registrants would nevertheless be required to provide climate-related disclosure (including intra-year updates) on Form 6-K, even if Canada does not mandate such disclosure and the SEC has determined that relying on the MJDS framework is appropriate with respect to climate-related disclosures.

If the final SEC rules are adopted without the MJDS Exclusion, Canadian MJDS bank registrants would need to comply with both the climate disclosure requirements of the CSA and OSFI, applicable requirements of the Canadian climate legislation as well as those under the final SEC rules. The imposition of both Canadian and U.S. climate disclosure requirements would not confer meaningful benefits for investors, who would already have access to TCFD-aligned climate information under the Canadian MJDS bank registrants' home country jurisdiction requirements but could create the risk of overwhelming investors with information that is immaterial to their investment or voting decisions and would lead to significant incremental costs on Canadian MJDS bank registrants.

For these reasons, we strongly support the SEC's proposal to exclude Form 40-F (and the other MJDS forms) from the climate-related disclosure requirements. This approach is consistent with the SEC's over 30 year practice of respecting the governance and related disclosure regimes of Canada based on mutual recognition and should be maintained in the final SEC rules. Consistent with the MJDS Exclusion, we also urge the SEC to clarify that MJDS Registrants would not be required to make climate-related disclosure (including intra-year updates) on Form 6-K unless Canadian requirements mandate such disclosure.

III. <u>Recommendations to Enhance the Proposed Rules' Alignment with Current and Emergent Global Standards</u>

Notwithstanding the MJDS Exclusion, considering the international presence of our members' operations, investors, customers and other stakeholders, we are providing substantive comments on certain aspects of the Proposed Rules that we believe meaningfully deviate from global standards, which have been adopted or are being considered. We have included a number of recommended changes to the Proposed Rules, as discussed below and in Schedule 2 (Detailed Recommendations to Enhance the Proposed Rules) below, to align with current and emerging global standards and to permit reasonable flexibility to allow registrants to comply with disclosure obligations in multiple jurisdictions. We believe that an aligned and flexible approach would incentivize current registrants to engage in climate-related activities, while avoiding a potential chilling effect on the capital markets if private companies determined that the proposed climate disclosures in the U.S. are too burdensome.

We urge the SEC to continue engaging with international regulators and standard setters in order to improve harmonization. Governments and organizations around the world are currently working to develop and advance climate-related disclosure frameworks. As we have previously stated in our June 2021 comments to the SEC, we strongly support efforts to establish a harmonized set of guidelines for climate-related disclosures that would support comparability across registrants in different jurisdictions and reduce the potential for global fragmentation in this area.[10] The global investment community is increasingly demanding clear, consistent, and comparable disclosure of climate-related information. We believe such information can only be achieved if there is robust and

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9 In the Proposing Release, the SEC explained that, similar to the treatment of other important business and financial information, the Proposed Rules would require FPIs that do not report on domestic forms to disclose any material change to the climate-related disclosure provided in a registration statement or annual report in their Form 6-K. Proposing Release, at 288. The SEC further explained that, while the SEC is proposing to amend Form 6-K to add climate-related disclosure to the list of the types of information to be provided on Form 6-K, an FPI would not be required to provide the climate-related disclosure if such disclosure is not required to be furnished pursuant to subparagraphs (i), (ii) or (iii) of General Instruction B. *Id.* at 288, n.692.

10 *See* CBA, *CBA Comments on SEC's Public Statement: Public Input Welcomed on Climate Change Disclosures* (June 11, 2021), *available at* https://www.sec.gov/comments/climate-disclosure/cll12-8906894-244211.pdf.

effective international cooperation in the development of relevant frameworks (including green taxonomies, climate scenario analysis, stress testing and climate-related financial disclosure standards, particularly as they pertain to climate risks). In addition, even if registrants are not legally required to comply with overlapping requirements in different jurisdictions, they may face competitive pressures to navigate multiple different disclosure frameworks.

We applaud the SEC's engagement with standard setters such as the ISSB. We believe that continued, active engagement among regulators, standard setters and market participants is necessary to advance the climate reporting landscape. In order to achieve reliable, consistent, and comparable disclosures, registrants and investors will both benefit greatly from the development of clear and globally-aligned guidance on GHG emissions accounting standards and methodologies, as well as operational and organizational boundaries, among other critical guidance. The CBA would welcome the opportunity to contribute to such an effort.

Without taking a consistent approach to its international counterparts, the SEC's requirements will reduce the comparability and decision-usefulness of the resulting disclosures for investors and increase the cost and complexity of compliance for registrants.

We strongly urge the SEC to eliminate its proposed inclusion of qualitative and quantitative climate risk disclosures in notes to a registrant's audited financial statements. One area of significant divergence between the SEC's Proposed Rules and climate disclosure rules proposed by the CSA and the ISSB relate to the disclosure of the financial impacts of climate risks. As currently proposed by the SEC, the proposed financial statement disclosure requirements would mandate (1) granular, line-item by line-item climate risk disclosures if the impacted amount is 1% or more of the related line-item and (2) disclosure of the aggregate amount of expenditure expensed or capitalized costs incurred if the impacted amount is 1% or more of the total expenditure expensed or total capitalized costs incurred. We are concerned about the significant implementation challenges associated with the proposed financial statement disclosure requirements, the appropriateness of such management estimates being included in the notes to the audited financial statements section rather than included in the MD&A, and the potential for fragmentation in accepted accounting standards and financial statements. Moreover, we question the usefulness of such disclosures to investors.

The purpose of a registrant's SEC filings is to provide investors with the information that they need to make investment or voting decisions with respect to the registrant. The proposed financial statements disclosures deviate from the SEC's traditional materiality-based disclosure regime (as discussed in Section IV below) and the SEC's reasons for doing so are not evident in the Proposing Release. Without requiring separate financial statement disclosures, investors would still have access to information on an issuer's material climate-related financial impacts, since registrants (1) are required to provide such information in their MD&A discussion under the SEC's existing requirements and (2) would be required to include a narrative description of such impacts under proposed Item 1502 of Regulation S-K. If registrants are required to add granular and potentially immaterial climate-related metrics into their financial statements, considering these disclosures would be presented without the narrative description that would contextualize such disclosures in the MD&A, the resulting financial statements presentation may be confusing to investors and potentially misleading (including by giving the false impression that these metrics are capable of being accurately and consistently measured at a 1% level of significance).

Furthermore, the proposed financial statement disclosures would likely vary across registrants (in terms of content and quality) given that registrants—including financial institutions in particular—will need to make highly subjective judgments, estimates and allocations. As climate risk is a transverse risk, determining (1) whether a financial impact is climate-related (rather than due to other factors, such as seasonality or technological updates), (2) to which line item such impact should be allocated, and (3) whether a climate-related financial metric is an expenditure or a capitalized cost, among other determinations, would in many instances require registrants to make subjective judgments that are unlikely to be made on an uniform basis across industries in the absence of clear and widely adopted principles and methodologies. Such established principles and methodologies do not exist today and are unlikely to emerge in the near future. Therefore, requiring the proposed financial statement disclosures today will inevitably result in periodic reports and registration statements that include immaterial climate-related financial information, as well as information that is inherently speculative, which would be intermixed with traditional financial statement disclosures. This is more likely to confuse than help investors in understanding registrants' material financial exposure to climate risks and activities (both in isolation and in proportion to a registrant's overall financial condition).

Given that the bifurcation of climate-related financial impacts from other financial metrics requires subjective judgments, they are by nature more appropriate to be disclosed in the MD&A section. Registrants will follow their existing internal control processes that are more suited to such management reporting. Finally, without sufficient maturity and standardization of methodologies and practices critical to climate-related disclosures, registrants may need to restate their financial statement notes to reflect evolving industry and audit best practices, which will increase costs and may expose registrants to additional litigation risks, without providing investors with consistent, clear, and decision-useful disclosure.

For these reasons, we recommend that the SEC eliminate the proposed financial statements climate disclosure requirements. Instead, consistent with another aspect of the Proposed Rules,[11] we recommend that the SEC only require registrants to include a discussion of any material financial impacts of climate-related risks and activities in the MD&A section of their annual reports, which is better aligned with the approach recommended under the TCFD framework.

The SEC should not mandate, but rather permit flexibility with respect to, disclosures that are more prescriptive than the TCFD recommendations. Although the Proposed Rules are modeled in part on the TCFD framework, in many aspects they would mandate details that significantly exceed the TCFD disclosure recommendations. Specific examples of such overly prescriptive elements are discussed in Schedule 2 (Detailed Recommendations to Enhance the Proposed Rules) below, along with our recommendations for how to better align such elements to the TCFD framework by modifying or eliminating certain details that are unlikely to be decision-useful to investors.

Relatedly, disclosures aligned with the TCFD framework typically follow a "comply or explain" approach whereby registrants either "comply"—by disclosing material climate-related information—or "explain" why they cannot or should not disclose against a particular requirement.[12] This approach elicits decision-useful disclosure that is responsive to investors' investment or voting decisions while mitigating the harmful consequences of requiring registrants to make immaterial disclosures against a rapidly evolving climate reporting landscape. Therefore, even if the SEC adopts our specific recommended changes to further align with the TCFD recommendations set forth in Schedule 2 (Detailed Recommendations to Enhance the Proposed Rules) below, we would nevertheless recommend that the SEC not mandate climate-related information that is immaterial to investors' investment or voting decisions, as further discussed in Sections IV and V, below; rather, registrants should continue to be able to voluntarily make such disclosures as they deem appropriate.

IV. Recommendations for a Materiality-Based Approach to Climate-Related Disclosure

We support the SEC's goal of creating climate-related disclosures that are consistent, comparable, reliable and, therefore, decision-useful for investors. Consistent with our recommendation in our comments on the CSA Proposed Instrument, we believe this goal will be best achieved if the SEC adheres to a materiality-based disclosure approach that is consistent with the traditional materiality standard for purposes of U.S. securities laws—*i.e.*, a matter is material if there is a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities or how to vote.[13] Therefore, we recommend that the SEC uniformly limit its climate-

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11 *See* proposed 17 CFR §229.1502(d) (requiring a registrant to provide a narrative discussion of whether and how any climate-related risks described in response to proposed Item 1502(a) of Regulation S-K have affected or are reasonably likely to affect the registrant's consolidated financial statements).

12 *See* TCFD, *Recommendations of the Task Force on Climate-related Financial Disclosures* (June 2017), *available at* https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf.

13 *See Basic Inc.* v. *Levinson*, 485 U.S. 224, 231-232 (1988)*; see also TSC Indus., Inc.* v. *Northway, Inc*., 426 U.S. 438, at 449 (1976).

related disclosure requirements to information that is material to investors' investment or voting decisions.

The Proposed Rules are, in many aspects, not based on materiality. Such requirements include disclosures related to climate risk, impacts, strategy, metrics and targets, as well as those related to governance and risk management. Under a "one-size fits all," prescriptive (rather than materiality-based) approach, registrants will be obligated to disclose a large amount of immaterial information that is not decision-useful to investors, making it difficult for investors to understand the key climate-related risks and activities for each registrant that are actually material to the investors' investment or voting decisions.

In addition, overly prescriptive disclosure requirements that are untethered to the SEC's historical principles-based materiality approach, particularly those in the governance and risk management areas (e.g., such as the requirement to identify climate expert directors, disclose the frequency of board and management discussion of climate-related risks, disclose internal climate expertise, and disclose governance and risk oversight of climate-related initiatives), could lead to governance and operational issues that reduce the effectiveness of registrants' climate risk oversight function and negatively impact registrants' ability to implement their climate strategies, as discussed further in Schedule 2 (Detailed Recommendations to Enhance the Proposed Rules) below.

In other aspects, the Proposed Rules seem to require registrants to use a different materiality standard than assessing what information is material to investors' investment or voting decisions.[14] By imposing different and unfamiliar materiality standards, the Proposed Rules will likely cause registrants to take different interpretive approaches that result in disclosures that lack consistency and comparability for investors. In addition, the lack of materiality qualification in many disclosure elements is meaningfully misaligned with international standards.[15] Finally, in the absence of a uniform materiality qualification, the Proposed Rules would discourage (particularly smaller) registrants from undertaking measures such as maintaining an internal carbon price,[16] setting targets

[14] For example, with respect to the disclosure trigger for Scope 3 disclosures (*see* proposed 17 CFR §229.1504(a)(2)(c)(1)), the SEC suggests both qualitative and quantitative standards (e.g., 40% of total GHG emissions) that could result in Scope 3 GHG emissions being required to be disclosed regardless of whether a registrant's Scope 3 GHG emissions are material to its investors' investment or voting decisions, or whether a registrant's Scope 3 emissions reduction target or goal is material to its investors' investment or voting decisions. The 1% financial statement metrics threshold described above is another example of a departure from the materiality standard under the SEC's typical principle-based approach.

[15] For example, the Proposed Rule requires Scope 1 and Scope 2 GHG emissions disclosures to be reported on an aggregated and gas-by-gas basis (*see* proposed 17 CFR §229.1504(a)(1)), which is more onerous than the national inventory and related GHG emissions reporting under the United Nations Framework Convention on Climate Change and the Paris Agreement. The SEC's proposed approach to Scope 3 emissions disclosure triggers are not aligned with the TCFD, the GHG Protocol, SASB, ISSB or the GFANZ/NZBA.

Furthermore, the ISSB's approach expressly focuses on the disclosure of material information. ISSB has stated that "[m]ateriality is an entity-specific aspect of relevance based on the nature or magnitude, or both, of the items to which the information relates" and notes that its draft standard "does not specify a uniform quantitative threshold for materiality or predetermine what would be material in a particular situation." *See* TECHNICAL READINESS WORKING GROUP, GENERAL REQUIREMENTS FOR DISCLOSURE OF SUSTAINABILITY-RELATED FINANCIAL INFORMATION PROTOTYPE 9 (2021). A materiality-based approach would be consistent with regimes in other jurisdictions as well. *See, e.g., Commission Proposal for a Directive of the European Parliament and of the Council Amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as Regards Corporate Sustainability Reporting*, COM(2021) 189 final (April 4, 2021) (employing a "double materiality approach"); The Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022, SI 2022/31(Eng.) (following a TCFD-aligned framework).

[16] *See* proposed 17 CFR §229.1502(e).

and goals,[17] adopting transition plans,[18] or conducting scenario analyses,[19] given the detailed and burdensome disclosure requirements and the potential legal liabilities associated with making such disclosures even where they would not be reasonably expected to be material to investors.[20]

In Schedule 2 below, we have included more detailed examples of aspects of the Proposed Rules that are either not qualified by materiality, or that otherwise deviate from the standard of materiality tethered to investors' investment or voting decisions. We also provide our recommendations with respect to each of these aspects, which we urge the SEC to consider, especially if the MJDS Exclusion were to be removed from the final SEC rules.

V. Recommendations Regarding the Implementation Approach and Timeline Especially if the MJDS Exclusion were to be Removed from the Final SEC Rules

As discussed above, we strongly agree with the proposed MJDS Exclusion and request that the same approach be taken in the final SEC rules.

However, if the final SEC rules were to eliminate the MJDS Exclusion, we urge the SEC to adopt an appropriate re-proposal timeline. A re-proposal is necessary so that MJDS Registrants can have a meaningful opportunity to further comment on the application of the rules to MJDS Registrants, including as to the appropriateness of permitting substituted compliance with respect to some or all portions of the re-proposed rules by using climate-related disclosures made to satisfy Canadian requirements. The CBA and its members would welcome the opportunity to assist the SEC staff in developing substituted compliance requirements that are appropriate for MJDS Registrants.

If the final SEC rules were to eliminate the MJDS Exclusion, we also urge the SEC to delay initial compliance for MJDS Registrants. Under the Proposed Rules, reporting for large accelerated filers (with a December 31 fiscal year-end) will apply with respect to fiscal year 2023 if the Proposed Rules become effective before the end of 2022. Under this accelerated timeline, registrants must start building the requisite compliance framework immediately in order to meet the SEC's proposed initial compliance calendar, as they will need to devote substantial time and resources to establish the necessary controls and procedures that would enable registrants to provide such disclosures in their SEC filings. For MJDS Registrants, many are or will be in the process of implementing compliance frameworks in anticipation of the need to comply with the CSA Proposed Instrument and the newly proposed OSFI requirements. MJDS Registrants are relying on the SEC's proposed MJDS Exclusion. Therefore, especially if the MJDS Exclusion were eliminated, many MJDS Registrants would be significantly behind their U.S. counterparts in preparing for complying with climate disclosure requirements under the Proposed Rules. For these reasons, MJDS Registrants should be afforded a longer initial compliance timeline if there is a fundamental change in the rules' applicability to MJDS Registrants.

Especially if the MJDS Exclusion were eliminated, we recommend the SEC alleviate compliance burdens and improve disclosure quality by allowing registrants to follow the content, timing and location recommendations below:

- Content: Generally, as noted above, we recommend that the SEC limit mandatory disclosure requirements to those that are material to investors' investment or voting decisions. However, because we believe that investors will benefit from the global advancement of the GHG emissions reporting landscape, we recommend that the SEC require larger registrants[21] to

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[17] *See* proposed 17 CFR §229.1506.

[18] *See* proposed 17 CFR §229.1503(c)(1).

[19] *See* proposed 17 CFR §229.1503(f).

[20] *See* proposed 17 CFR §229.1503(f).

[21] We note that these recommendations with respect to GHG emissions reporting are limited to larger registrants. Consistent with our recommendation in our comments on the CSA Proposed Instrument, we believe that smaller registrants should not be required to disclose GHG emissions at this time, since they

disclose their Scope 1 and Scope 2 GHG emissions, but permit such registrants to take a "comply or explain" approach with respect to Scope 3 GHG emissions[22] in light of the significant data and methodological limitations that hinder registrants' ability to estimate Scope 3 GHG emissions with sufficient accuracy. In addition, registrants should be afforded the flexibility to disclose any immaterial climate-related information on a fully voluntary basis.

- Timing and Location: Registrants should be allowed to provide all of the new climate-related disclosures, including any required GHG emissions disclosures, on a form that is provided to the SEC on an annual basis on a lagged timeline (at least 180 days after fiscal year-end). We recommend that the information on the new form generally be disclosed on a furnished basis, with certain material information to be specifically incorporated by reference into registrants' annual reports and registration statements as described below;

- Incorporation by Reference: If the SEC adopts the above recommendations, we recommend that the SEC require registrants to incorporate by reference *material* information from the new form into their annual reports and registration statements, except that while meaningful underlying data and methodological limitations are being resolved, if the final SEC rules would impose Scope 3 disclosure obligations on the MJDS Registrants, the MJDS Registrants should be required to disclose such information on a "filed" basis to the SEC only to the extent that they would be required to include such information in their financial reports under home country jurisdiction requirements (e.g., if they disclose material Scope 3 information in their MD&A and AIF under CSA requirements). As a result of the recommended incorporation by reference, the specified information would be disclosed on a "filed" basis, even though other information on the new form would be disclosed on a "furnished" basis. For example, any immaterial information voluntarily provided on the furnished form should not be required to be incorporated by reference into the above-mentioned annual reports and registration statements on a "filed" basis.

We believe that a requirement to make new climate-related disclosures on a new form on a lagged reporting timeline, combined with a requirement to specifically incorporate by reference certain material information on a "filed" basis (with the rest of the information on the form provided on a "furnished" basis), will improve disclosure quality for investors while alleviating burdens on the registrants. Allowing registrants to disclose the new climate-related information in one place offers an obvious benefit to investors, who currently have to sift through multiple platforms (e.g., ESG reports, website disclosures, social media posts, etc.) to gain a full picture of registrants' climate-related risks and activities. The decision-usefulness of such disclosures will likely improve if registrants are allowed to make the disclosures at least 180 days after fiscal year-end, after they have obtained the necessary third-party data and completed their annual reports (including audited financial statements). Although registrants can use reasonable estimates for fourth quarter data under the Proposed Rules, these disclosures will need to be revised in later filings once fourth quarter data is available, which will increase confusion for investors and costs and burdens for registrants.

The timing under the Proposed Rules is likely to be particularly challenging for banks, given that a significant portion of their GHG emissions are indirect and therefore require data from clients, customers and other third parties in the banks' complex value chains. In fact, we observe that the leeway to use estimates for fourth quarter data assumes that registrants will (and are able to) calculate (and recalculate as new data becomes available) their emissions on a quarterly or more frequent basis, which is not required by the Proposed Rules and would represent a significant burden.

Furthermore, allowing registrants to stagger their annual financial and climate-related reporting will not only ease the compliance burdens of preparing both at the same time, but will also allow registrants to adopt a deliberative process to assess the specific impacts of their climate-related risks and activities (e.g., initiatives on GHG emissions, decarbonization impacts) on their financial performance. Given climate-related risks and opportunities manifest on a longer time horizon in comparison to other

likely require more time than their larger counterparts to develop the capability to disclose Scope 1, Scope 2 and Scope 3 GHG emissions.

22 This is also consistent with the GFANZ/NZBA market-leading approach to Scope 3 emissions in the sector.

financial disclosure impacts, we do not believe this approach would negatively impact the relevance or timeliness of disclosures. Instead, allowing lagged disclosure (to allow actual fourth quarter data to become available) is likely beneficial to investors.

In addition, for both "filed" and "furnished" disclosures, we urge the SEC to adopt the following safe harbors. In recognition of the fact that relevant climate science, standards, methodologies and regulatory guidance are not yet sufficiently developed, the SEC should provide a meaningful liability safe harbor with respect to disclosures of (1) Scope 1 and Scope 2 GHG emissions, (2) scenario analysis, (3) transition plans, (4) targets and goals, (5) financial impacts of climate-related risks and activities (which, as recommended above in Section III, should be part of the MD&A discussion) and (6) registrants' determination with respect to the materiality of any of the new climate-related disclosures (including for purposes of whether such information should be incorporated by reference on a "filed" basis pursuant to our recommendations above).

As the SEC has acknowledged, there are significant challenges associated with the accurate measurement and disclosure of Scope 3 emissions.[23] We therefore urge the SEC to provide a more robust liability safe harbor than proposed in the Proposed Rules from both SEC enforcements and private litigation with respect to all Scope 3 disclosures since they heavily rely on third-party data and estimates. Under the Proposed Rules, disclosure of Scope 3 emissions by or on behalf of the registrant would be deemed not to be a fraudulent statement unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.[24] Registrants should be entitled to rely on a safe harbor for Scope 3 disclosures without having the burden of proving that they had a "reasonable basis" to believe that the Scope 3 disclosure is accurate. Instead, the safe harbor should apply unless a plaintiff has demonstrated that the registrant had actual knowledge that the information being disclosed (including the third-party data and estimates used to prepare the disclosure) was false or misleading.

With respect to disclosures on future plans, impacts, or activities, such as scenario analysis, transition planning, targets and goals, the SEC has stated that the forward-looking elements of such disclosures would be subject to the Private Securities Litigation Reform Act (PSLRA) forward-looking statement safe harbor.[25] Since these disclosures are, as a general matter, heavily based on current expectations of future events, the SEC should clarify which, if any, elements would fall outside of the scope of the forward-looking statements safe harbor.

If the proposed requirement to identify climate expert directors is included in the final SEC rules, the SEC should provide a safe harbor for any director identified as a climate expert, with a safe harbor that should be identical to the ones provided to other "expert" directors (e.g., directors who are audit committee financial experts[26] and those proposed to be provided for directors who are cyber experts[27]).

The SEC should alleviate compliance burdens and mitigate risk of investor confusion by not requiring historical period disclosures. The requirement to provide historical period disclosures (e.g., with respect to GHG emissions) is inconsistent with other international climate disclosure frameworks, such as the ISSB framework. From an initial compliance perspective, if two historical fiscal years are required to be included in a registrant's first annual report that complies with the climate-related disclosure requirements, registrants would have no real phase-in period and would have to begin implementation of complex processes and procedures prior to the promulgation of any final SEC rules, including by preparing data on a retroactive basis. On an ongoing basis, as standards and methodologies continue to rapidly evolve, registrants will be forced to either

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[23] *See* Proposing Release at 208 (noting that "it may be difficult to obtain activity data from suppliers and other third parties in a registrant's value chain, or to verify the accuracy of that information," and that it may be "necessary to rely heavily on estimates and assumptions to generate Scope 3 emissions data.").

[24] *See* proposed 17 CFR §229.1504(f).

[25] Proposing Release at 272.

[26] *See* 17 CFR §229.407(d)(5)(iv).

[27] SEC Release No. 2022-39, proposed Item 407(j) (Mar. 9, 2022).

continuously make intra-year updates or face legal liability for inconsistencies between current year disclosures in a prior annual report (based on then-current standards and methodologies), on the one hand, and historical disclosures in the next annual report for that same year (based on updated standards and methodologies), on the other hand. This will be both confusing for investors and costly for registrants. Therefore, we recommend that the SEC omit all historical period disclosure requirements from its final rules.

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We thank you for the opportunity to provide our view on the Proposed Rules. For the reasons discussed above, we strongly support the proposed MJDS Exclusion in the Proposed Rules and request that the SEC take the same position in the final SEC rules. Further, we applaud the SEC's continued efforts to coordinate with international regulators and standard setters to harmonize climate disclosure requirements based on the TCFD recommendations. In furtherance of those efforts, we encourage the SEC to consider the importance of a materiality-based disclosure standard that further aligns with the TCFD framework and proposed ISSB guidance to increase harmonization with other jurisdictions. As discussed above, such an approach would provide registrants with the flexibility to provide material information to investors in a manner that fosters comparability and consistency across industries and jurisdictions and provides the global investor community with information that is decision-useful.

We would be pleased to discuss any questions that you may have on our recommendations.

Sincerely,

Schedule 1 – Summary of Canada's Ongoing Efforts to Enhance Climate-Related Disclosures

Schedule 2 – Detailed Recommendations to Enhance the Proposed Rules

Schedule 1
Summary of Canada's Ongoing Efforts to Enhance Climate-Related Disclosures

Climate disclosure requirements are very much a focus of the Canadian government and the Canadian regulators. Since 2018, Canada has had a national carbon pricing law, the *Greenhouse Gas Pollution Pricing Act* ("GGPPA"), that mandates, shapes, and informs many climate-related disclosures in Canada. The GGPPA acts as a consistent economy-wide backstop and allows for both implementation through equivalent provincial legislation/regulations, and compliance flexibility through the use of market mechanisms and regulated emission offsets. The GGPPA stipulates economy-wide carbon pricing through a general fossil fuel levy and mandates GHG emissions reporting to support its legislated output based emission pricing system for large industrial emitters. An annual price on carbon, currently at Cdn$50/ton CO_2 will increase $15 each year until it reaches $170/ton CO_2 in 2030. Canada also enacted the *Net Zero Accountability Act* in 2021. That legislation enshrines the Government of Canada's commitment to achieve net-zero GHG emissions by 2050 and provides a framework of public reporting accountability and transparency to deliver on it.

Specific initiatives are also already underway to mandate climate-related disclosures in Canada. In October 2021, the CSA proposed the CSA Proposed Instrument. Currently, the CSA is considering comments on the CSA Proposed Instrument. If finalized by December 31, 2022, registrants subject to the CSA Proposed Instrument with a December 31 year end (except venture registrants) will be required to implement the CSA Proposed Instrument's climate-related disclosures starting in 2024 (in respect of FY 2023), similar to the disclosure compliance timeline under the Proposed Rules. The CSA Proposed Instrument and the Proposed Rules are both modeled on the TCFD framework and use definitions generally consistent with GHG Protocol definitions.[28] In particular, the CSA noted that the CSA Proposed Instrument "reflects the growing international convergence around the TCFD recommendations".[29] Similarly, in choosing the TCFD framework as the foundation for the Proposed Rules, the SEC stated that using such a "globally recognized framework should help elicit climate-related disclosures that are consistent, comparable and reliable."[30]

In addition, the Canadian banking regulators, similar to their U.S. counterparts, are increasingly focused on the impact of climate-related risks on Canadian banks. In November 2020, the Bank of Canada and OSFI announced a pilot project on the use of climate-change scenarios to better understand the risks to the financial system related to a transition to a low-carbon economy.[31] A group of institutions from the Canadian banking and insurance sectors, including two CBA members that are MJDS Registrants, voluntarily participated in the pilot project. In January 2021, OSFI launched a three-month consultation with the publication of a discussion paper, *Navigating Uncertainty in Climate Change: Promoting Preparedness and Resilience to Climate-Related Risks*.[32] This consultation engaged federally regulated financial institutions ("FRFIs"), federally regulated pension plans ("FRPPs") and other stakeholders in a dialogue on climate-related risks that can affect the safety and soundness of FRFIs and FRPPs.

In its 2022 Budget, the Canadian federal government said that it is "committed to moving towards mandatory reporting of climate-related financial risks across a broad spectrum of the Canadian economy, based on the international [TCFD] framework."[33] In particular, OSFI "will consult federally

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28 *See generally*, Greenhouse Gas Protocol, *A corporate Accounting and Reporting Standard*, (March 2004), *available at* https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf.

29 CSA Proposing Release at 12.

30 Proposing Release at 49.

31 *See* Bank of Can. and OSFI, *Using Scenario Analysis to Assess Climate Transition Risk*, Office Superintendent Fin. Insts. (Jan. 14, 2022), *available at* https://www.bankofcanada.ca/wp-content/uploads/2021/11/BoC-OSFI-Using-Scenario-Analysis-to-Assess-Climate-Transition-Risk.pdf.

32 *See OSFI Launches Consultation on Climate-Related Risks in the Financial Sector*, OSFI (Jan. 11, 2021), *available at* https://www.osfi-bsif.gc.ca/eng/osfi-bsif/med/Pages/clmt-rsk_nr.aspx.

33 Government of Canada, *Budget 2022: A Plan to Grow Our Economy and Make Life More Affordable*, Chapter 3.4 (Building Canada's Net-Zero Economy), *available at* https://budget.gc.ca/2022/home-accueil-en.html (last visited May 20, 2022).

regulated financial institutions on climate disclosure guidelines in 2022 and will require financial institutions to publish climate disclosures—aligned with the TCFD framework—using a phased approach, starting in 2024," and "will also expect financial institutions to collect and assess information on climate risks and emissions from their clients."[34]

Consistent with the 2022 Budget, in May 2022, OSFI announced that it would be consulting on expectations to advance climate risk management with its issuance of draft Guideline B-15, which proposes a prudential framework that is more climate sensitive and recognizes the impact of climate change on managing risk and sets the stage for OSFI's expectations of FRFIs. The draft guideline, which generally establishes OSFI's expectations relating to FRFI's management of climate-related risks, is divided into two chapters. The first chapter includes six principles to incentivize improvements in the quality of FRFI's governance and risk management practices and the second chapter includes six principles to enhance transparency through climate-related financial disclosures.[35] The principles for climate-related disclosures are based on the TCFD and the ISSB and are meant to help FRFIs to "find an appropriate balance of disclosures that reasonably satisfy the recommendations and principles without overwhelming users with unnecessary information."[36] FRFIs would be expected to implement the disclosures required by Guideline B-15 starting in 2024, for fiscal periods ending on or after October 1, 2023.[37]

In May 2022, the Government of Canada also set mandatory climate disclosure as top priority for the Sustainable Finance Action Council, which was launched by the government last year and consists of 25 of Canada's leading financial institutions, insurance companies, and pension funds.[38] The Sustainable Finance Action Council has been directed under the May 2022 mandate to prepare advice to the finance and environment ministers on the most effective ways to implement mandatory climate disclosures by the end of this year.

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[34] *Id.*

[35] The principles relating to governance and risk management include the following: (1) the FRFI should incorporate the implications of climate change and the transition to a low-GHG economy to the FRFI in its business model and strategy; (2) the FRFI should have the appropriate governance, policies, and practices in place to manage climate-related risks; (3) the FRFI should have processes in place to adequately price climate risk-sensitive assets and liabilities and manage these exposures in accordance with the FRFI's Risk Appetite Framework; (4) the FRFI should mitigate the impact of climate-related disasters on its critical operations; (5) the FRFI should use climate scenario analysis to assess the impact of climate-related risk drivers on its risk profile, business strategy, and business model; and (6) the FRFI should maintain sufficient capital and liquidity buffers for its climate-related risks. *See* Guideline B-15.

[36] *Id*. The disclosure-related principles include the following: (1) the FRFI should disclose relevant information relating to the potential impact of climate-related risks and opportunities on its markets, businesses, corporate or investment strategy, financial statements and future cash flows; (2) the FRFI should disclose specific and complete climate-related information; (3) the FRFI should disclose clear, balance and understandable information that serves the needs of a range of issuers; (4) the FRFI should disclose reliable, verifiable and objective information; (5) the FRFI should disclose information appropriate for its size, nature and complexity; and (6) the FRFI should disclose information consistently over time. *See Id.*

[37] *Id*.

[38] *See* Canada Sets Mandatory Climate Disclosure as top Priority for Sustainable Finance Action Council, *available at* https://www.esgtoday.com/canada-sets-mandatory-climate-disclosure-as-top-priority-for-sustainable-finance-council/.

Schedule 2

Detailed Recommendations to Enhance the Proposed Rules

We have provided additional detailed recommendations below in a table format organized in accordance with the four pillars of the TCFD Framework, for ease of the SEC's review. The detailed recommendations below focus on the contents of the disclosures and should be read in conjunction with our recommendations set forth in Section V regarding the timing and location as well as the incorporation by reference of climate-related disclosures.

Proposed Rule Section	Examples of Concerns	Further Explanation of Concerns	Recommendations
Governance			
§229.1501(a)(1)(i)–(ii)	*Having a "specialist" director on the board could inhibit the important roles played by "non-expert" directors in aligning on climate strategy as part of overall business strategy, and may present unique challenges for Canadian banks subject to the board governance requirements in the Bank Act (Canada)*	This disclosure requirement could lead to increased costs and challenges in recruiting and retaining climate experts. Designating one director as the expert in a particular area may discourage other directors from engaging in that area. A board should be diverse and bring a collective balance of expertise, skills, experience, competencies and perspectives across a variety of competencies.[39] Furthermore, the board members, individually and collectively, have the same fiduciary duties with respect to the company. Thus, designated "expert" directors could ultimately result in less effective oversight. Additionally, boards should have flexibility to determine their own composition in a holistic way, in light of the needs of the company and the collective diversity, expertise and tenure of current directors, rather than having overly prescriptive regulatory requirements which may place undue emphasis on board oversight of climate risk over other risk management topics. Appointing a climate expert should be an individual judgment for individual companies in light of their structure, sophistication, and relevant risks.	The SEC should not require disclosure of a climate expert director given the board's overall fiduciary duty to understand and manage climate-related matters.

[39] In the 2018 Prudential Inquiry into the Commonwealth Bank of Australia Final Report (the 2018 APRA Report), the Australian Prudential Regulation Authority (APRA) noted that diversity in board makeup and the value of differing perspectives is critical in promoting healthy challenge (2018 APRA Report, at17). "[There are] benefits to be had from leveraging the collective experience of the full Committee membership, where access to better information and a team of enquiring minds has a higher chance of yielding more effective challenge." The APRA Report highlighted that the risk committee's chair and chief risk officer's reputation as industry experts with a 'scholarly gravitas' as well as the high degree of collaboration between these two individuals stifled the level of challenge at risk committee meetings and led other committee members to think that the real meeting had occurred prior to the committee meeting. (2018 APRA Report p. 18). *Available at* https://www.apra.gov.au/sites/default/files/CBA-Prudential-Inquiry_Final-Report_30042018.pdf.

Proposed Rule Section	Examples of Concerns	Further Explanation of Concerns	Recommendations
		Furthermore, bank boards have the ability to retain independent subject matter experts and regularly retain independent compensation advisory firms to assist with the review of executive compensation. Bank boards could periodically engage an external independent climate advisory expert to review the bank's climate risk framework. Also, the OSFI Corporate Governance Guideline[40] states that relevant financial industry and risk management expertise are key competencies for the board. This highlights the fact that director expertise and key competencies should vary depending on the nature of the particular business activities and related risks of each enterprise. The expertise needed on one particular board may not be the same for another board. This should support a principles-based approach rather than a prescriptive approach. In addition, Canadian banks are in a unique position for board composition as they are generally subject to more stringent regulatory requirements than other Canadian business firms in meeting certain governance obligations, for example, board composition and qualifications. Bank boards must comply with the *Bank Act* (Canada) requirement that a majority of the directors, including the Chief Executive Officer, be resident Canadians. With the relatively low number of directors compared to the size of the population of climate experts in Canada, having to meet prescriptive disclosure requirements for a climate expert director as well as these other requirements will be technically challenging while balancing these governance requirements.	

40 OSFI, *Corporate Governance Guideline*, page 6, (September 2018), *available at* https://www.osfi-bsif.gc.ca/Eng/Docs/CG_Guideline.pdf.

Proposed Rule Section	Examples of Concerns	Further Explanation of Concerns	Recommendations
§229.1501(a)(1)(i)–(ii)	*Disproportionate exposure for "climate expert" director in the absence of a safe harbor*	The Proposed Rules would require a registrant to disclose whether any of its directors has expertise in climate-related risks.[41] Although we believe that ESG and climate expertise are an appropriate part of a board's competencies and experience matrix, the additional requirements stipulated in the Proposed Rules may result in unintended consequences. The requirement to disclose whether any board members have climate-related expertise creates an implicit "obligation" to have at least one climate expert and registrants will feel pressured to add a director they can state has "expertise in climate-related risks" to avoid potential negative investor perception. Identifying a director as having climate expertise, without a safe harbor insulating such director from legal liability resulting from such designation, may publicly distort such director's role in climate-related oversight and negatively affect a registrant's ability to recruit and retain such experts.	If the SEC retains the climate expert requirements in the final SEC rules, we propose, in an effort to mitigate the risks noted, that the SEC provide a safe harbor for directors identified as having climate expertise, similar to what is currently provided to directors who are audit committee financial experts[42] and proposed to be provided to directors with cyber expertise.[43]
§229.1501(a)(1)(iii) §229.1501(b)(1)(ii)–(iii)	*Disclosure of the frequency of board and management discussion of climate-related risks is inappropriate*	The Proposed Rules require disclosure of the frequency with which boards and management discuss climate-related risks. This requirement inappropriately focuses on quantity rather than quality of discussion. This disclosure requirement will drive changes in behavior by boards and management that is detrimental to shareholders as it could result in boards scheduling more time to discuss climate issues than they reasonably deem necessary, could limit attention and time for discussion of other significant matters (as determined by a risk and principles-based approach), and this will degrade the ability	The SEC should not require disclosure of the frequency of board and management discussion of climate-related risks and opportunities.

41 Proposing Release at 344.

42 *See* 17 CFR §229.407(d)(5)(iv).

43 SEC Release No. 2022-39, Proposed Item 407(j) (Mar. 9, 2022).

Proposed Rule Section	Examples of Concerns	Further Explanation of Concerns	Recommendations
		of boards to exercise their independent judgment about how their time and resources should be allotted, redirecting time away from other pressing matters. This could provide an avenue for frivolous lawsuits claiming a breach of fiduciary duties and books and records requests.	
§229.1501(a)(1)(i)–(ii) §229.1501(b)(1)(i)–(ii)	*The level of detail required to be disclosed in connection with a company's internal climate expertise could result in employee retention concerns, particularly at this time of considerable talent poaching in the climate change sector.*	The proposed governance-related disclosures would require detailed descriptions of the position at a registrant that is responsible for monitoring and assessing specific climate-related risks, as well as with respect to in-house staff with the relevant expertise and management's reliance on such staff. The universe of such experts is limited. Highlighting reliance on these experts will not only result in publication of inappropriate details on the registrant's business plans, but lead to potential poaching issues that could further inhibit registrants' ability to comply with climate disclosures and to implement climate strategies.	The SEC should provide registrants with the flexibility to decide whether to make any of the detailed disclosures under the Proposed Rules regarding a registrant's internal climate expertise.
§229.1502	*Disclosure of details about oversight of climate-related initiatives within a registrant could reveal confidential information about the registrant's future business initiatives*	The SEC requires a significant amount of details on governance and risk oversight, which could result in companies being pressured to provide confidential and proprietary details of their business plans to the public earlier than they otherwise would have, which could limit the effectiveness of such plans or deter registrants from preparing such plans at all.	The SEC should align the level of details to the scope of required disclosures per the TCFD framework or those currently published in proxy statements for other material risks.
Strategy			
§229.1502(a)–(f)	*Assessing the materiality of medium- and long-term climate risks is a highly subjective exercise*	Although there is an existing framework for registrants to assess and disclose the forward-looking impacts of material risks, this framework is better suited to a focus on short-term future impacts where the effects on the registrant, its business and its financial statements are more likely to be predicted with greater certainty. Longer future horizons require a registrant to predict whether events that are less certain to occur will have a material impact on its business and financial statements, which is a highly speculative exercise. Given concerns regarding legal liability for incomplete disclosure, registrants may have to disclose	Because medium- and long-term climate related risks are inherently uncertain and will vary depending on a wide variety of external factors (e.g., climate-related legislation in the U.S., in Canada and abroad), registrants must rely heavily on assumptions, estimates and factors outside of their control. A registrant's determination of whether such medium- and long-term impacts are material should therefore

Proposed Rule Section	Examples of Concerns	Further Explanation of Concerns	Recommendations
		potential risks that are not material, in order to reduce such liability exposure. This is particularly the case in assessing transition risks through rapidly changing models populated by new and evolving data and information.	themselves be subject to the safe harbor.
§229.1502(a)(1)(i)	*Disclosure of physical risks by zip code, even if not material to that location, may obfuscate regional and macro climate trends, and will be unduly cumbersome and burdensome for registrants to disclose and for investors to review*[44]	Given the nature of their operations, requiring banks to report physical risks by zip code will result in confusing, inconsistent and untenably voluminous disclosure for investors. Requiring individualized disclosures of specific climate-related risks for each of these zip codes is a departure from the risk disclosure requirements otherwise found in Regulation S-K and is not aligned with the TCFD framework, the ISSB Proposed Guidance, the CSA Proposed Instrument or the requirements of other international disclosure regimes.	Rather than requiring companies to disclose large amounts of granular data based on evolving climate science, we recommend that the SEC take a more traditional approach, permitting a registrant to highlight in a more general manner the regions, markets and types of operation most likely to be impacted by the physical risks of climate change.
§229.1502(b)(1)(i)(A) §229.1502(b)(1)(i)(B)	*The proposed detailed disclosure requirements relating to assets subject to certain physical risks (e.g., flooding or high or extremely high water stress) are unnecessary for investors and potentially harmful for registrants*	The Proposed Rules would require disclosure of (1) the percentage of assets (including square meters or acres) that are located in flood hazard areas in addition to their location (on a zip code by zip code basis), if the physical risk concerns the flooding of buildings, plants or properties located in flood hazard areas, in addition to their location; and (2) the amount of assets (e.g., book value and as a percentage of total assets) located in a region if a risk concerns the location of assets in regions of high or extremely high water stress. These disclosures are likely to be impracticable and cause security and competitive concerns for registrants, without providing corresponding benefits to investors.	Consistent with the above, we recommend that the SEC apply a traditional materiality-based approach, permitting a registrant to make any such disclosures to the extent they are likely to be material to investors' investment or voting decisions. Registrants should also be permitted to omit disclosures that are competitively sensitive or would cause security concerns.
§229.1502(e)	*Disclosure of internal carbon pricing regardless of materiality will create unintended consequences*	We agree that investors would benefit from certain disclosures on certain registrants' internal carbon pricing, particularly in the absence of a legislated carbon pricing regime. However, without a materiality standard, we are concerned that these rules would have a chilling effect on	The SEC should only require the disclosure of internal carbon pricing if its impact is material to investors' investment or voting decisions. Without a materiality requirement, the Proposed

[44] The Proposed Rules define "location" as "a ZIP code or, in a jurisdiction that does not use ZIP codes, a similar subnational postal zone or geographic location" (proposed 17 CFR §229.1500(k)).

Proposed Rule Section	Examples of Concerns	Further Explanation of Concerns	Recommendations
		internal shadow carbon pricing and investment activities that should be encouraged to mitigate climate-related risks. As written, the Proposed Rules may deter certain registrants from engaging in such prudent internal shadow carbon pricing practices due to disclosure challenges and potential legal liability exposure. Given the level of detail required by proposed Regulation S-K Item 1506, registrants that do not currently engage in practices related to internal carbon pricing may be disincentivized from doing so in the near future because the new activities could trigger premature disclosure in SEC filings.	Rules would likely yield disclosures that are not useful to investors' investment or voting decisions or in their assessment of companies' climate risk mitigation efforts.
§229.1502(f)	*Proposed mandatory disclosure of all scenario analysis is premature given the current lack of methodological maturity*	The Proposed Rules would require a registrant that conducts climate scenario analysis to disclose details of its analysis, including scenarios considered, parameters and assumptions used, analytical choices made and the projected financial impact on the registrant's business strategy under each scenario. Many banks already conduct climate scenario analysis. However, even among those banks that conduct such analysis, many are still in the initial stages of tailoring and refining scenarios and analysis to their factual implementation. These banks also face significant challenges which can result in the inability to disclose meaningful scenario analysis results, including (i) the lack of standardized or well-developed scenarios and methodologies across the industry, as such tools are being developed by financial regulators and industry groups, and (ii) significant limitations on the availability and quality of the data required to conduct such analyses. Requiring detailed public disclosures as soon as a registrant starts to explore scenario analysis and before its scenario analysis methodologies and capabilities have reached a sufficient level of maturity would likely result in premature disclosures that are less than appropriately accurate. Ultimately, such disclosure would be too uncertain to be	Scenario analysis disclosures should not be required until the scenarios and methodologies necessary to conduct and to disclose useful results of accurate analyses are sufficiently well developed and standardized. If the SEC does require disclosure of scenario analyses, it should include necessary protections for confidential and proprietary information to ensure that registrants are not discouraged to conduct scenario analyses, and to ensure that the registrants who conduct such analyses are not placed at a competitive disadvantage compared to those who do not.

Proposed Rule Section	Examples of Concerns	Further Explanation of Concerns	Recommendations
		decision-useful for investors and conducive to creating potential legal liability exposure for registrants. Effective scenario analysis also requires the use of substantial amounts of competitively sensitive and proprietary data relating to, among other things, a registrant's forecasted future performance, potential business plans, capital plans, risk models and other factors that must be kept strictly confidential. Because the scenario analysis disclosure requirements as proposed would require registrants to disclose such proprietary information, it may leave registrants who choose to conduct scenario analyses at a disadvantage compared to registrants who do not conduct such analyses. The Proposed Rules may thereby discourage registrants from undertaking preliminary scenario analysis and those that have not begun using scenario analysis from engaging in the process, at least in the near future, while the relevant methodologies and scientific underpinnings are continuing to evolve. Finally, registrants' risk management functions consider a number of important topics of concern and utilize a variety of risk management tools. Requiring granular disclosure of one type of risk management tool could be misleading to investors.	
Risk Management			
§229.1503	*Granular risk management disclosure could disincentive registrants from incorporating climate-related risks into their risk management programs*	The Proposed Rules would require registrants to specify whether and how the board considers climate risk as part of the registrant's risk management and to describe any processes in place for identifying, assessing and managing climate-related risks, including granular detail with respect to whether and how a registrant integrates such risks into its risk management systems or processes. In addition, public disclosure could also provide a company's competitors with competitively-important information, with no corresponding benefit to investors.	Any requirement to disclose risk management processes and procedures should be materiality-based and aligned with the TCFD's approach, and include necessary protections for confidential and proprietary information.

Proposed Rule Section	Examples of Concerns	Further Explanation of Concerns	Recommendations
§229.1503(a)(1)(i)	*Requiring granular descriptions of the processes used to identify, assess, manage and prioritize risks would not result in decision-useful information for investors*	The Proposed Rules would require registrants to describe any processes the registrant has for identifying, assessing, and managing climate-related risks. This requirement would include several highly prescriptive disclosures, including descriptions of how a registrant prioritizes climate-related risks and decides whether to accept, mitigate or adapt to a particular risk, regardless of whether such risks are material to investors' investment or voting decisions. Requiring disclosure of how a registrant prioritizes climate-related risks in relation to all other risks, even those that are not material to the registrant or to an investor's investment or voting decisions with respect to the registrant, may lead to a significant amount of required disclosures of immaterial information. If registrants are required to disclose how climate risks compare to other, immaterial risks, it may also be difficult for investors to identify and consider material information about key climate risks, while distracting investors from disclosures relating to other material non-climate information that may be of equal or more importance to a particular registrant.	Registrants should only be required to disclose their processes for identifying climate-related risks to the extent material to investors' investment or voting decisions.
§229.1503(c)	*Requiring disclosure of a transition plan without regard to materiality may discourage the use of transition plans, and would not produce decision-useful information for investors*	The Proposed Rules would require fulsome disclosures of the details of any transition plan that a registrant has implemented as part of its climate-related risk management strategy, regardless of whether that information is material to investors' investment or voting decisions. By subjecting registrants that have adopted a transition plan to significant additional disclosure requirements (as compared to registrants that do not engage in transition planning), including annual updates and descriptions of all actions taken during the year to meet the goals of such transition plan, registrants that have not adopted a transition plan may be deterred from doing so. Similarly, registrants that are in the early stages of developing their plans may be incentivized to abandon the process altogether to avoid burdensome and premature disclosures regarding such	To avoid discouraging registrants from implementing transition plans that could ultimately benefit investors and registrants by enhancing the registrant's ability to identify and adapt to climate-related risks, disclosure of transition plans should be voluntary. A voluntary disclosure framework would allow a registrant to implement and refine transition plans gradually, as it assesses what data, tools, methodologies and scenarios are most pertinent to its industry, market and geographic location.

Proposed Rule Section	Examples of Concerns	Further Explanation of Concerns	Recommendations
		plans and processes that are still being refined and progressed internally at the registrant.	If the SEC does require disclosure of transition plans, the SEC should only require disclosure to the extent material to investors' investment or voting decisions and should provide clarity as to when the disclosure is triggered (e.g., only after the transition plan is adopted at a senior management or board level).
Metrics and Targets			
§229.1504(a)–(b)	*Requiring immaterial Scope 1 and Scope 2 emissions to be disclosed on a "filed" basis would create legal liability exposure that is not proportional to the value of such information for investors*	As discussed in Section V above, we generally support mandatory disclosure of Scope 1 and Scope 2 GHG emissions by larger registrants, which can assist investors in assessing a registrant's climate-related impact and efforts to lower GHG emissions. However, we are concerned that the Proposed Rules would require information about registrants' immaterial Scope 1 and Scope 2 emissions to be provided on a "filed" basis, even where such emissions may be insignificant and not be material to the registrant, or to an investor's decisions with respect to the registrant.	The SEC should require larger registrants to disclose their Scope 1 and Scope 2 GHG emissions, but only material Scope 1 and Scope 2 GHG emissions information should be disclosed on a "filed" basis.
§229.1504(a)(1)	*Requiring disclosure of immaterial gas-by-gas GHG emissions would not produce decision-useful information for investors*	The requirement to report GHG emissions on a gas-by-gas basis set out in the Proposed Rules would apply regardless of the materiality of a particular gas to the registrant's business or to overall GHG emissions (on a CO_2 equivalent basis). This requirement would not provide investors with meaningful information and would be difficult for registrants to implement. This requirement would also be inconsistent with current approaches to disclosure under SASB and ISSB, and will likely cause meaningful reporting and internal control challenges if adopted as proposed.[45]	Disclosure of disaggregated GHG emissions by each constituent GHG should be mandated in SEC documents only to the extent material to investors' investment or voting decisions.

[45] *See, e.g.*, IFRS, *Exposure Draft: IFRS S2 Climate-related Disclosures* at 23 (Mar. 31, 2022) *available at* https://www.ifrs.org/content/dam/ifrs/project/climate-related-disclosures/issb-exposure-draft-2022-2-climate-related-disclosures.pdf (noting that the ISSB's standards would require an entity to provide an aggregation of all seven greenhouses gases as opposed to disaggregating the constituent gases); SASB, *Commercial Banks: Sustainability Accounting Standards* (Oct. 2018), *available at* https://www.sasb.org/wp-content/uploads/2018/11/Commercial_Banks_Standard_2018.pdf.

Proposed Rule Section	Examples of Concerns	Further Explanation of Concerns	Recommendations
§229.1504(c)	*Scope 3 emissions (which capture financed emissions) would almost certainly need to be disclosed by banks under the Proposed Rules but it would be particularly challenging for banks to disclose Scope 3 emissions due to the complexity of their value chains, the lack of data and the evolving calculation methodologies*	The Proposed Rules require a registrant to disclose Scope 3 emissions if they are material or if the registrant has set a GHG emissions reduction goal or target that includes Scope 3 emissions. For many banks, disclosure of Scope 3 emissions is likely required under these disclosure triggers. Scope 3 emissions disclosure is likely to be particularly challenging for financial institutions. For example, "financed emissions" are likely to constitute a significant portion of Scope 3 emissions and would almost certainly need to be disclosed separately. Banks face significant challenges in collecting, analyzing and disclosing Scope 3 data. These challenges include complexity of banks' value chains (including their lending and investment portfolios), reliance on third-party data that is difficult to collect, as well as lack of data granularity and comparability. In addition, although certain financed emissions calculation methodologies (e.g., PCAF for financed emissions) are gaining traction, market standards and practices regarding Scope 3 emissions calculation continue to evolve rapidly.	The SEC should permit registrants to disclose, on a "comply or explain" basis, Scope 3 emissions disclosures in light of the significant data and methodological limitations that hinder registrants' ability to estimate Scope 3 GHG emissions with sufficient accuracy. In providing such "comply or explain" disclosures, a registrant should be permitted to focus only on the categories of Scope 3 emissions that are material to investors' investment or voting decisions with respect to that particular registrant. In addition, as discussed in Section V above, the MJDS Registrants should be required to disclose such information on a "filed" basis to the SEC only to the extent that they would be required to include such information in their financial reports under home country jurisdiction requirements (e.g., if they disclose material Scope 3 information in their MD&A and AIF under CSA requirements).
§229.1504(d)	*The GHG intensity requirement is unclear with respect to how it applies to financial institutions and financed emissions.*	The Proposed Rules would require registrants to disclose GHG intensity for Scope 1 and Scope 2 emissions and, if Scope 3 emissions are otherwise disclosed, separately for Scope 3 emissions. The GHG intensity disclosure for each fiscal year must be in terms of both metric tonnes of CO_2e per unit of total revenue and per unit of production. According to the Proposed Rules, the unit of production should be "relevant to the company's industry to facilitate investor comparison of the GHG intensity of companies within an industry." The Proposed Rules do not explain what the appropriate "unit of production" or denominator	Before imposing such a requirement, the SEC should provide clear guidance, as well as necessary flexibility, to financial institution registrants with respect to its application and consider harmonizing with the approach and flexibility provided by the GFANZ/NZBA.

Proposed Rule Section	Examples of Concerns	Further Explanation of Concerns	Recommendations
		measure is for the financial sector, or what other measures of economic output should be used if a financial institution determines that it does not have a unit of production.	
§229.1505	*Subjecting Scope 1 and Scope 2 emissions to the proposed, graduated third-party attestation requirements is premature.*	Under the Proposed Rules, accelerated filers and large accelerated filers (including FPIs) would need to include in their disclosures an attestation report that covers the disclosure of its Scope 1 and Scope 2 emissions. Attestation would be on a limited assurance basis for the first two years the requirement is effective and on a reasonable assurance basis thereafter. The Proposed Rules would require that attestation reports be provided using standards that are publicly available at no cost and established by a body or group that has followed due process procedures, although the SEC declined to adopt a particular standard because of the evolving nature of the GHG emissions reporting and attestation landscape. Requiring registrants to obtain external attestation of Scope 1 and Scope 2 GHG emissions (particularly if the rule ultimately requires such attestation at a "reasonable assurance" level) will pose a number of implementation challenges for registrants. As discussed above, the SEC's disclosure requirements would require registrants to gather substantial data from third parties. It is not clear that such third parties will have in place processes and procedures to generate data that would meet a reasonable assurance standard and it is not clear that registrants could require third parties to, in a timely manner, change such processes and procedures. Data the registrants can generate themselves will raise similar concerns and, at least in the short term, it is not clear what data standards attestation providers will accept. Registrants will also face difficulties in selecting qualified attestation providers, since the current pool of qualified experts is limited, and it is expected that there will be	We support the SEC's decision not to subject Scope 3 emissions to attestation. Although we support a requirement to have some form of assurance on Scope 1 and Scope 2 GHG emissions reporting, we believe that registrants should have flexibility to determine the appropriate type and level of assurance, taking into account materiality.

Proposed Rule Section	Examples of Concerns	Further Explanation of Concerns	Recommendations
		competition for qualified attestation providers at least in the short term. For the reasons above, we do not believe that the proposed attestation standards are appropriate. Although we support a requirement to have some form of assurance on Scope 1 and Scope 2 GHG emissions reporting, we believe that registrants should have flexibility to determine the appropriate type and level of assurance, taking into account materiality. For example, initial assurance for registrants may be in the form of a process review or gap analysis. Finally, we agree with the SEC's decision not to require assurance with respect to Scope 3 emissions, given the data and methodological issues noted in this letter.	