June 11, 2021

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

Send to: rule-comments@sec.gov

Dear Ms. Countryman:

Re: CBA\textsuperscript{1} Comments on SEC’s Public Statement: Public Input Welcomed on Climate Change Disclosures

We welcome the opportunity to provide feedback on the U.S. Securities and Exchange Commission’s (SEC) Public Statement “Public Input Welcomed on Climate Change Disclosures” (“Public Statement”). We understand that the purpose of this Public Statement is for the public to provide input on how to enhance current climate change disclosure requirements to improve the consistency, comparability, and reliability of disclosure related to climate change matters, and on how the Commission can best regulate climate change disclosures.

It is our understanding that the SEC has begun developing a climate change disclosure framework. The CBA’s comments in this letter are specific to the questions and issues raised in the Public Statement. If and when the SEC publishes a rule-making proposal relating to climate change disclosures, the CBA would welcome the opportunity to provide comment.

We have summarized our response in relation to the questions in the Public Statement into thematic points which are provided below.

1. The SEC should allow an issuer to demonstrate compliance with an established framework in its home-country jurisdiction, consistent with the Commission’s longstanding practice of respecting the governance and related disclosure regimes of other sovereigns. For Canadian Domestic Systemically Important Banks, this can be accomplished through the Multijurisdictional Disclosure System (MJDS) established in 1991:
   - Dual reporting requirements for eligible MJDS issuers and potentially inconsistent standards between U.S. and Canadian requirements can be avoided by exempting

\textsuperscript{1} The Canadian Bankers Association is the voice of more than 60 domestic and foreign banks that help drive Canada’s economic growth and prosperity. The CBA advocates for public policies that contribute to a sound, thriving banking system to ensure Canadians can succeed in their financial goals. [www.cba.ca](http://www.cba.ca)
such issuers from resulting SEC reporting requirements, or, at a minimum, permit MJDS issuers to comply with analogous home-country laws. We recommend that the SEC confirm in any new rulemaking that Canadian MJDS issuers would not be subject to any new requirements on climate disclosure. This would be consistent with the current practice that permits MJDS issuers to satisfy SEC reporting requirements by submitting the SEC disclosure documents prepared in compliance with home-country requirements, which, for Canadian MJDS banks, include the applicable requirements of the Office of the Superintendent of Financial Institutions (“OSFI”) and the Bank of Canada, as well as those imposed by the Canadian Securities Administrators (“CSA”). The SEC should work closely with its sister-regulatory agencies. From an investor perspective, avoiding dual reporting requirements reduces the potential for confusion which could arise from similar or duplicative disclosures across jurisdictions.

- In addition, climate change is very much a focus of Canadian securities and banking regulators:
  - 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*. This consultation seeks to engage 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 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. A small group of institutions from the Canadian banking and insurance sectors are participating voluntarily in the project.
  - In addition, in August 2019 the CSA issued *CSA Staff Notice 51-358* applicable to Canadian issuers regarding the Reporting of material Climate Change-related Risks.

2. **There should be flexibility for the location of the climate change disclosures, especially for MJDS filers:**

- Issuers should be permitted to decide whether to provide disclosures in annual corporate reports, other existing periodic filings, or dedicated climate disclosures. This approach would allow for such a separate report to be published at a later date than the annual report, thus reducing the compliance burden. It would also allow investors and other stakeholders enough time to absorb and react to the new information (i.e., prevent “disclosure overload”).

- We also recommend that the SEC give due consideration to whether climate change disclosures contained in SEC reports are deemed “filed” (and therefore subject to
certain securities law liabilities that apply to filed documents) or whether they are
deemed “furnished” and therefore not subject to all of the same securities law liabilities
as “filed” documents.

3. **SEC should leverage current and emergent global standards:**

- The CBA supports enhancing the quality, accuracy and consistency of climate change
disclosures made by issuers. Investors are increasingly demanding clear, consistent
and comparable disclosure of climate-related information. Around the globe, work is
currently underway to develop and advance disclosure frameworks, and we support
efforts to establish a harmonized set of guidelines for climate change reporting that
would support comparability across organizations and reduce the potential for global
fragmentation in this area. We recognize that strong and effective international
cooperation will be needed in the development of green taxonomies, stress testing,
scenario analysis and financial disclosure standards. Accordingly, we recommend that
the SEC permit issuers to rely on a globally accepted disclosure framework for SEC
reporting purposes. These may include the frameworks or standards produced by the
Task Force on Climate-Related Financial Disclosures (TCFD) and the Sustainability
Accounting Standards Board (SASB).

- Given that the realm of climate disclosures is an evolving space, we suggest that the
SEC consider phasing in requirements over time, on a principled basis, taking into
consideration that issuers that rely on data from customers or suppliers in order to have
an overall view of Scope 3 emissions should be granted additional time to disclose that
data. Furthermore, any proposed new disclosure frameworks should take into account
that certain issuers (including those in regulated industries, like financial institutions)
must balance industry-specific considerations (i.e., bank-specific standards prescribed
by OSFI or the Bank of Canada) and any additional disclosure required to maintain
consistency across the marketplace.

- In addition, there are other factors that should be taken into account by the SEC when
considering a disclosure framework:

  - **Data Challenges:** In the present state, market participants face many challenges
when disclosing quantitative data on climate risks. These data challenges include
lack of data granularity, interconnectedness of data, proliferation and comparability
of data providers, data materiality, and access to reliable and validated tools. For
example, much of the data that is needed to measure Scope 3 emissions is either
of poor quality or simply not available. Similarly, the current understanding of
climate-related information that will be provided in financial disclosures remains
extremely uneven across financial statement users.

  - **Implementation Timeline:** In addition to data challenges, there is ongoing work on
developing the definitions and methodologies that will be required for effective
reporting standards. We request that the SEC provide a reasonable timeframe for
expectations of progress in this area given the real-world challenges of defining,
identifying, and measuring climate-related risks and integrating them into risk management frameworks.

- **Audit and Assurance Practices**: We believe that it is too early for the SEC to require mandatory audit or external assurance. The SEC should allow the space to mature and develop, while audit and assurance best practices emerge. These requirements should be carefully considered from a cost-benefit perspective, as the requirement for auditability could limit the robustness of the disclosure (i.e., banks would be less likely to disclose information if such information would be subject to strict audit requirements). Other challenges would also need to be addressed when requiring mandatory audit or external assurance: data challenges (noted above), evolving methodologies, and the level of audit support required. Similar to other disclosure requirements, these audit and assurance requirements should be phased in over time. Initially, the SEC, for example, could require issuers to disclose and choose the level of assurance (e.g. internal audit vs. external audit) underlying their climate change disclosures.

4. **Standards should be principles-based, focus on the climate risks and opportunities of a firm that are relevant to the SEC’s core mission of investor protection, and should be limited to the disclosure of material information:**

- Disclosure requirements should not only be principles-based but they should also address proportionality. Firms should be given flexibility in how climate change disclosures can be made, especially in the early stages of adoption. Climate change disclosure should be material, which should help support disclosure of decision-relevant data relating to an issuer’s material climate risks and opportunities. Industries face different climate-related issues, and they are in varying states of preparedness for climate disclosures (including established reporting practices, standards, and tools). Accordingly, a focus on disclosure of information that is material to an issuer should be a key aspect to any new climate-related disclosure framework ultimately chosen by the SEC. It is our view that a new requirement that issuers disclose a broad range of climate disclosures that are not material would not assist investors in making their investment decisions and would be confusing to investors.

- Furthermore, we believe it is important to take a risk-based approach that recognizes the important impacts that climate-related risks can have on the safety and soundness of both individual banks and the broader financial system. The transition and physical risks, which are associated with climate risk, should not be viewed as independent, stand-alone risks, but rather seen as “transverse” risks that impact and sometimes amplify traditional banking risks (e.g. credit, market, and operational risks).

5. **Necessity for safe harbor protection for climate change disclosures:**

- Key challenges facing issuers with respect to climate disclosures are the current data gaps and the ongoing development of data analytics and calculation methodologies. Issuers must balance requests from investors and other stakeholders for transparency
about their climate risk plans and progress, against the uncertainty associated with the calculation models and data. To assist issuers, the SEC should consider safe harbor provisions that would protect issuers with respect to reasonable and good-faith approximations and assumptions in their climate disclosures. This is especially critical for any type of disclosure dependent on unsettled methodologies (i.e., Scope 3 emissions).

- To encourage issuers to publish climate-related disclosures despite the fact that data analytics and calculation methodologies are still under development, the safe harbor provisions should protect against both shareholder litigation and SEC enforcement action. In addition, the safe harbor provisions should cover all climate-related disclosures, not just forward-looking statements. This broad scope is necessary because calculation methodologies will likely continue to evolve over the coming years, and an issuer may deem it necessary to restate previously published information on the basis that methodologies have improved. In a similar vein, the SEC should give guidance on cautionary language that issuers can use in their climate change disclosures that can both protect the issuer and notify the market of potential limitations in the disclosures. These would encourage more issuers to publish climate-related disclosures.

Thank you in advance for considering our comments as you contemplate any changes that are needed to the SEC disclosure requirements related to climate change risks. We would be pleased to discuss any questions that you may have on our feedback.

Sincerely,

[Signature]

Cc: Ms. Allison Herren Lee, Acting Chair