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Via E-mail: rule-comments@sec.gov

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington D.C. 20549-1090

Re: Comments on the Proposed Rule "The Enhancement and Standardization of Climate-Related Disclosures for Investors"; File Number S7-10-22

Dear Ms. Countryman.

Enbridge Inc. (Enbridge) appreciates the opportunity to provide comments to the Securities and Exchange Commission (the Commission or SEC) regarding the Commission's proposed rules for the enhancement and standardization of climate-related disclosures for investors (the Proposed Rules).

Enbridge is a leading North American energy infrastructure company with common shares listed on the Toronto Stock Exchange and the New York Stock Exchange. Headquartered in Calgary, Alberta, Canada, we operate an extensive network of liquids and natural gas pipelines, regulated distribution utilities and renewable power generation assets across North America and have a growing offshore wind presence in Europe. Enbridge is a corporation under the *Canada Business Corporations Act* and currently qualifies as a foreign private issuer in the U.S. for purposes of the *Securities Exchange Act of 1934*. As a foreign private issuer, although we are not required to file annual reports on Form 10-K with the Commission, we do so voluntarily. As such, Enbridge is subject to disclosure requirements in both Canada and the U.S.

Our perspective is drawn from our long and sustained history of voluntary disclosure of Enbridge's environmental, social and governance (ESG) performance. This year, we will publish our 21st annual Sustainability Report which follows best practices in ESG reporting, including alignment with the Task Force on Climate-Related Financial Disclosures (TCFD) recommendations and the Sustainability Accounting Standards Board (SASB) framework. Enbridge has also long followed the Global Reporting Initiative (GRI) standards. In 2019, we published our first TCFD-aligned climate report – and we provide annual updates in our Sustainability Reports, including discussion on each of the four core elements of the TCFD recommendations, as well as our Scope 1, Scope 2 and certain Scope 3 emissions. In 2020, Enbridge was among the first within the energy midstream sector to establish emissions reduction targets and we are committed to leading our sector. Our ESG goals include our commitment to achieve net zero greenhouse gas (GHG) emissions from our operations by 2050, with an interim target to reduce GHG emissions intensity 35% by 2030. We have made solid progress towards these ESG goals, including lowering our Scope 1 and 2 emissions intensity and absolute emissions by approximately 27% and 20% respectively, since 2018. In order to hold ourselves accountable for our performance, we have integrated our ESG goals into our enterprise-wide business plans, sustainable financing and incentive compensation. It is in this spirit that Enbridge provides the following comments and recommendations for the Commission's consideration.

Enbridge's Recommendations Regarding the Proposed Rules

We request that the Commission consider the following recommendations, aimed at improving the Proposed Rules and providing "clear rules of the road"[1] to support meaningful climate-related disclosure. The rationale for each recommendation is discussed in more detail in the balance of our comment letter.

- Maintain the long-standing and time-tested concept of "materiality", under which the registrant determines what information is material to a reasonable investor's investment decision, taking into account the total mix of information available to investors.
- Allow registrants to furnish, rather than file, the proposed information. Provide an option for registrants to furnish a stand-alone climate report on a different schedule than 10-K disclosure, when the data is ready for release.
- Expand the safe harbour provisions to include Scope 1 and 2 GHG emissions, in light of the inherent uncertainties of assessing climate risks at the granular level required by the Proposed Rules.
- Remove Scope 3 emissions from the list of required disclosures – this information can be phased in at a later time, once the relevant standards and guidance have matured.
- Remove the requirement to disclose information that could harm a registrant's competitive position.
- Phase in the disclosure requirements over a longer period, to enable registrants to put in place systems and controls that will ensure the reliability of the data and information provided.
- Include a clear and transparent mechanism to enable interlisted issuers to follow either the Canadian or U.S. rules, as applicable.

The Commission's Mandate and the Need for Clear and Consistent Rules

Enbridge fully supports a disclosure framework that is reasonable and provides clarity and certainty for investors and companies alike. We agree with the Commission's goals of providing investors consistent, comparable and decision-useful climate-related information for making investment decisions, as well as consistent and clear reporting obligations for issuers.[2] However, in our view, the Proposed Rules will not achieve those goals. As drafted, the Proposed Rules will increase the level of uncertainty for investors, and risk inundating them with volumes of immaterial information that is not consistent across industries and companies, and therefore, not useful for making investment decisions. At the same time, the Proposed Rules greatly increase liability risk and regulatory burden for public companies, without corresponding benefit to our investors.

As an example, the Proposed Rules would require registrants to identify how climate-related risks have impacted their business over the short-, medium- and long term. Registrants are already required to disclose material climate-related risks in their annual report on Form 10-K, and Enbridge discloses both physical and transition risks related to climate change in its discussion on risk factors. However, if the Proposed Rules are passed in their current form, it would be the first time that the Commission has required risk disclosures to be specified over prescribed time frames; this would be a significant departure from past practice. There are no known climate models or methods that predict short-, medium- and long-term risks specific to midstream assets. The Proposed Rules do not provide a specific range of years to define short-, medium- and long-term time horizons. Instead, the Commission provides flexibility for registrants to select the time horizons and to describe how they define

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[1] U.S. Securities and Exchange Commission: Press Release: SEC Proposes Rules to Enhance and Standardize Climate-Related Disclosures for Investors, March 21, 2022.
[2] *Ibid*.

them. As such, the time horizons selected will vary widely across companies, resulting in information that is not comparable or consistent for investors. Reporting on these risks will also require registrants to apply qualitative judgment with low degrees of certainty, which could provide investors with a false sense of accuracy. This lack of precision exposes the registrant to additional liability risk without adequate safe harbour protections.

Maintain the Materiality Standard – the Cornerstone of Disclosure

Enbridge believes it is critical for the Commission to maintain the time-tested materiality standard that serves as the cornerstone of the securities disclosure system: information is material if there is a substantial likelihood that a reasonable investor would consider it important or significant in deciding whether to buy or sell a security.[3] We recognize that ESG and climate change are becoming increasingly important to investors and other stakeholders, and we strive to provide our investors with transparent, decision-useful information about our company and its strategy, assets, operations and climate-related information. However, climate-related information is just one part of the total mix of information that investors look for to make prudent and informed investment decisions. The fact that climate-related information is valuable or interesting to many stakeholders does not make it material. We believe that companies are best positioned to determine materiality standards for disclosure of climate-related information, in light of their specific business circumstances, and to engage with their investors to determine what information is most useful to them.

The Proposed Rules are a significant departure from the SEC's materiality-based disclosure framework. In some cases, the Proposed Rules mandate the disclosure of detailed information that may be financially immaterial to a company like Enbridge, and in others, they distort the materiality framework by presuming certain information to be material. Some examples include the following:

- Registrants would be required to disclose the financial impacts of severe weather events and other natural conditions and transition activities as well as expenditures to mitigate these risks and for transition activities if such impacts or expenditures are 1% or greater of that line item. For context, Enbridge currently has annual single line items where 1% would equate to an amount as low as $2 million CDN. This information would be financially immaterial to a reasonable Enbridge investor, considering Enbridge's revenues, earnings and assets (our total assets as of December 31, 2021 were approximately $169 billion CDN).[4] As such, Enbridge recommends that the Commission remove the 1% threshold from the financial statement requirements. In addition, there are no standard definitions of "severe weather event" or "transition activity." Under the Proposed Rules, "transition activities" include "any efforts to reduce GHG emissions or otherwise mitigate exposure to transition risks."[5] For a midstream company such as Enbridge, this definition could be incredibly broad, and will be interpreted and applied in vastly different ways.
- The Proposed Rules assume that Scope 1 and 2 emissions are material for all companies and in all circumstances. They also require registrants to disclose Scope 3 emissions where they are material, and for oil and gas product manufacturers, they are *presumed* to be material. We are concerned with this application of the materiality test – by making such presumptions, the SEC fails to consider what information is material to a reasonable investor's investment decision, taking into account the total mix of information available to investors. In the discussion below, we also highlight other significant issues regarding the requirement to file Scope 3 emissions pursuant to the Proposed Rules.

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[3] *TSC Industries, Inc. v. Northway*, 426 U.S. 438, 448-49 (1976).
[4] Enbridge Annual Report on Form 10-K, for fiscal year ended December 31, 2021, at p. 101.
[5] U.S. Securities and Exchange Commission: 17 CFR 210, 229, 232, 239 and 249, Release Nos. 33-11042; 34-99478; File No. S7-10-22 (Proposed Rules), p. 454.

- Other climate-related information is required to be disclosed if the registrant has certain items in place, regardless of their materiality to the company, including information about transition plans, scenario analysis, internal carbon price and climate-related goals and targets. In accordance with the well-established materiality standard, the assessment of materiality of these items should be made on a case-by-case, registrant-by-registrant basis, rather than an across-the-board determination. These filing requirements are also another example of how the Proposed Rules would result in information that varies widely across companies. There are no standard methodologies for developing climate-related goals and targets, transition plans, or internal carbon prices. Accordingly, this information would not be comparable across companies and would not be decision-useful to investors.

The costs of requiring registrants to file detailed, immaterial information greatly outweigh the benefits. The long-standing materiality standard protects against overloading the reasonable investor with information that is not useful in making investment decisions. By requiring registrants to disclose detailed information, regardless of materiality, the SEC has proposed rules that will actually *hinder* a reasonable investor's ability to understand an issuer's disclosures and make investment decisions.

Scope 3 Emissions

The Proposed Rules would require disclosure of Scope 3 emissions if material or if the registrant has set a GHG emissions reduction target or goal that includes Scope 3 emissions.[6] Companies are best-positioned to determine what climate-related information is material to reasonable investors, just as they do with every disclosure they make under existing rules. Although the Proposed Rules state that Scope 3 emissions would only need to be disclosed if 'material', the Proposed Rules would limit the ability of a registrant to make its own assessment of materiality. In its commentary, the Commission presumes that Scope 3 emissions would be material for industries where Scope 3 emissions represent a relatively significant portion of a company's total GHG footprint. It goes on to note that for oil and gas product manufacturers, Scope 3 emissions are *likely to be material* and necessary to an understanding of a registrant's climate-related risks.[7] While midstream companies like Enbridge are not generally oil and gas manufacturers, we are concerned with the risk that this presumption creates. The correct application of materiality in this context is whether Scope 3 emissions are material to a reasonable investor's decision to buy, sell or hold securities of a particular company, not the portion of a company's total GHG emissions that Scope 3 comprises.

In addition, there is currently no standard or guidance for the midstream sector to define, measure or report on Scope 3 emissions. If pipeline companies are required to report emissions attributable to upstream, downstream and end-use activities that are not within our control and are highly uncertain and unreliable, this would result in significant double or multiple counting of emissions across companies. Companies may choose to voluntarily disclose Scope 3 information but requiring them to file such unreliable information in annual reports and registration statements, based an incorrect interpretation of materiality, goes beyond the Commission's mandate and reach. In the absence of consensus standards, companies cannot accurately determine their Scope 3 emissions, and therefore, this data would be inherently unreliable and potentially misleading. For these reasons, we believe it is premature to impose an obligation for registrants to file Scope 3 emissions information while these standards are still evolving.

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[6] *Ibid*, p. 470.
[7] *Ibid*, p. 165 (emphasis added)

The Commission's Proposed Rules come at a time when there is a great deal of fluidity in climate-related disclosure requirements, standards and frameworks across various jurisdictions – and a push toward global standardization.[8] We encourage the Commission to implement final rules that are reasonable and pragmatic, and as such, we believe that the requirements in the Proposed Rules regarding Scope 3 emissions are premature at this time. Climate-related disclosure requirements can be refined over time to meet evolving investor needs. Specifically, Scope 3 emissions can be phased in at a later time, once the relevant standards and guidance have matured.

Safeguards Required if Disclosures to be Made

The Proposed Rules mandate that all of the required new climate-related information be included in a registrant's 10-K (to which the CEO and CFO certifications apply) and in their registration statements. By expanding disclosures to include volumes of new, uncertain and potentially immaterial items, this increases the potential for incorrect information to be disclosed and ultimately increases potential liability of the registrant, as well as every CEO and CFO. Due to the long-term and uncertain nature of certain climate-related information, particularly while associated frameworks and standards are still evolving, Enbridge believes that climate-related disclosures should be furnished to, rather than filed with the Commission, and not be included as part of any annual or quarterly Sarbanes-Oxley Act certifications. Further, in light of the evolving nature of climate-related reporting standards and methodologies for calculation of GHG emissions, the safe harbour provisions should be expanded to include Scope 1 and Scope 2 emissions, in addition to Scope 3.

Competitive Risk

Many of the disclosures required by the Proposed Rules could result in competitive harm, as private companies and state-owned enterprises that compete in a registrant's sector would not need to provide the same type and level of information as public companies. By imposing these disclosure and compliance requirements on publicly traded companies only, the Proposed Rules would create a competitive advantage for companies that do not issue securities and will therefore not incur the same reporting and compliance burdens. The Proposed Rules would also require registrants to disclose proprietary information, such as the company's internal carbon price. Enbridge requests that the Commission remove the requirement to disclose information that could harm a registrant's competitive position, including their internal carbon price, if any.

Implementation Timeline

Assuming the Proposed Rules are adopted with an effective date in December 2022, registrants would need to collect data, starting on January 1, 2023, to include in their 10-K for the 2023 fiscal year (filed in 2024). To enable compliance with the Proposed Rules, companies will need to expend significant effort to enhance data collection (including from third parties in their value chain), validation, reporting, control design, and third-party verification. Given the increased liability concerns, companies will work to have appropriate processes and controls in place in order to ensure the accuracy of the climate-related data that will be included in the 10-K for the 2023 fiscal year. Enbridge strongly recommends that the Commission extend the proposed implementation

[8] For instance, in 2021, the International Sustainability Standards Board (ISSB) was formed and tasked with developing "a comprehensive global baseline of high-quality sustainability disclosure standards to meet investors' information needs." On March 31, 2022, the ISSB published a draft standard on climate-related disclosures, based on TCFD and SASB, and opened a comment period for the end of July 2022. See "ISSB delivers proposals that create comprehensive global baseline of sustainability disclosures", March 31, 2022: IFRS - ISSB delivers proposals that create comprehensive global baseline of sustainability disclosures.

timeline such that the proposed disclosures, including GHG emission metrics, be required no earlier than for the 2024 fiscal year (filed in 2025), and preferably longer. It is critical to give registrants with sufficient time to ensure that their data is available and reliable in time for filing in the 10-K.

At the outset of implementing the Proposed Rules, aligning the financial reporting timelines with emissions calculations and reporting will be challenging, given the complexity associated with compiling and verifying GHG data for the purposes of reporting to environmental agencies. One solution would be to allow issuers to furnish a stand-alone climate report on a different schedule than 10-K disclosure, when the data is ready for release.

Harmonization and Standardization

As noted above, Enbridge is subject to disclosure requirements in both Canada and the U.S. Like the SEC, Canadian securities regulators are also currently developing rules and guidance regarding climate-related disclosures. [9] The Proposed Rules do not currently contain a mechanism to allow interlisted issuers to follow either the Canadian or the U.S. rules, as applicable. The result is that issuers like Enbridge would be subject to different requirements in different jurisdictions. If issuers are required to disclose under two different, and potentially conflicting regimes, this would result in increased costs, complexity, inconsistency and diminished comparability for investors. We know that this is not the Commission's intention.

Enbridge supports the Commission in continuing to work together with securities regulators in other jurisdictions to align progress toward the shared goal of consistent, comparable and decision-useful climate-related information for market participants. As such, we recommend that the Commission work closely with the CSA and Canadian securities regulators to develop rules that are consistent across the closely tied U.S. and Canadian markets. As an example, Canadian and U.S. securities regulators took a collaborative approach to resource extraction rules, whereby each jurisdiction adopted substitution or alternative reporting provisions which recognize disclosure in other jurisdictions that satisfies the same objectives. [10]

The Proposed Rules do not currently propose to amend Form 40-F, used by Canadian issuers eligible to report under the Multijurisdictional Disclosure System. [11] Enbridge recommends preserving this exclusion and expanding it to *all* Canadian foreign private issuers, whether they voluntarily file annual reports on Form 10-K or not. Adopting this approach would mitigate any inconsistency in reporting requirements and would provide issuers with certainty that they would not be subject to two different sets of rules. Another option would be to adopt a mechanism similar to the provisions in Regulation S-K that exempt foreign private issuers from the requirements to disclose executive compensation according to the requirements of Regulation S-K that apply to U.S. domestic issuers. [12]

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[9] In October 2021, the Canadian Securities Administrators published proposed National Instrument 51-107 regarding disclosure of climate-related matters (CSA Proposed Instrument).[9] The CSA Proposed Instrument would require issuers to disclose certain climate-related information in compliance with TCFD recommendations (subject to certain modifications). See Canadian Securities Administrators, Consultation: Climate-related Disclosure Update and CSA Notice and Request for Comment, Proposed Instrument 51-107 *Disclosure of Climate-related Matters*, October 18, 2021: 5977940-CSA-Notice-Proposed-NI-51-107.ashx (asc.ca).

[10] See, in the U.S., 17 CFR 240 13q-1(d) and in Canada, section 10 of the *Extractive Sector Transparency Measures Act*, S.C. 2014, c. 39, s. 376.

[11] Proposed Rules, pp. 279-280.

[12] 17 CFR 229.402 (Item 402) Executive compensation.

Conclusion

We thank the Commission for the opportunity to provide comments. Our comments are focused on meeting the needs of both investors and issuers and supporting clear, consistent and reasonable rules for disclosure of climate-related information. We welcome additional opportunities to further engage with the Commission on this topic.

Sincerely,
Enbridge Inc.

(Signed) "*Robert R. Rooney*"

Robert R. Rooney, Q.C.
Executive Vice President & Chief Legal Officer