Following the Footpath to Mandatory TCFD Disclosure in the United Kingdom:

Lessons for Canadian and Other Regulators

Janis Sarra | May 2021

Canada Climate Law Initiative | L'Initiative canadienne de droit climatique

ABOUT THE CANADA CLIMATE LAW INITIATIVE

The Canada Climate Law Initiative examines the legal basis for corporate directors, officers, pension fiduciaries, and asset managers to consider, manage, and report on climate-related financial risks and opportunities, advancing knowledge on effective climate governance practice and exploring the scope and limits of fiduciary obligation in respect of climate change. It is a collaboration of the University of British Columbia (UBC) Centre for Business Law and Osgoode Hall Law School, York University; and is the Canadian partner of the global Commonwealth Climate and Law Initiative, founded at Oxford University, United Kingdom.

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IN BRIEF

Regulators in Canada and elsewhere are considering regulatory changes to accelerate the transition towards net-zero carbon emissions. Part of that consideration is whether to adopt the Taskforce on Climate-related Financial Disclosures (TCFD) four pillar framework of governance, strategy, risk management, and metrics and targets. We can learn from regulators that have already adopted measures, in particular, the recent activities of the United Kingdom (UK) Government. The UK Government is committed to mandatory climate-related TCFD-aligned disclosures across the UK economy over a five-year period, including: listed commercial companies, UK-registered companies, banks and building societies, insurance companies, asset managers, and Financial Conduct Authority (FCA)-regulated pension schemes.

Financial institutions supervised by the UK Prudential Regulation Authority (PRA) are now required to disclose climate-related risks in line with TCFD, including insurance and reinsurance firms, banks, building societies, and PRA-designated investment firms, and the deadline for fully-embedded TCFD disclosure is 31 December 2021. The move to mandatory disclosure is part of the UK's broader strategy to decarbonize the UK economy.

The FCA has published a final rule for UK premium listed companies, which requires them to disclose compliance with the TCFD recommendations on a comply-or-explain basis effective January 2021. Companies need to assess if their approach to managing climate-related risks is consistent with the TCFD and, if not, develop a programme for achieving compliance, including establishing board-level governance and risk management structures and processes for effectively managing and disclosing climate-related risks to TCFD standards. In 2022, mandatory disclosure will extend to UK-registered companies, a wider scope of listed companies, the largest UK-authorised asset managers, and FCA-regulated pension providers with greater than £1 billion in assets under management. Pursuant to existing prospectus and continuous disclosure requirements, listed companies must already disclose material climate matters needed for investors to make informed decisions.

The UK Government also proposes using the TCFD as the basis of its disclosure requirements under UK company law and limited liability partnerships law. It anticipates that 50% of UK-registered large private companies will be subject to mandatory disclosure requirements in 2022. The goal is to move from comply-or-explain to 'comply'. The FCA has stated that it expects companies to be able to make TCFD-aligned disclosures except where they face transitional challenges in obtaining the relevant data or embedding relevant modelling or analytical capabilities.

The Climate Financial Risk Forum, in which senior financial industry representatives and regulators cooperate to advance responses to climate-related financial risks and opportunities, has been pivotal in building private-sector support for the TCFD framework.

This briefing note, current to May 2021, highlights the policy rationales for moving to mandatory TCFD-aligned disclosure, sets out the paths the UK Government is taking to make disclosure mandatory across the economy, and raises important considerations for regulators in Canada and elsewhere.

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Abbreviations

AIF	annual information form
BEIS	Department for Business, Energy and Industrial Strategy
CSA	Canadian Securities Administrators
EU	European Union
DTR	Disclosure Guidance and Transparency Rules
DWP	Department for Work & Pensions
FCA	Financial Conduct Authority
FCA PS20/17	Financial Conduct Authority Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations, Policy Statement 20/17
FPC	Financial Policy Committee
FRC	Financial Reporting Council
GHG	greenhouse gas
ICAAP	Internal Capital Adequacy Assessment Process
IFRS	International Financial Reporting Standards
IPO	Initial Public Offering
LLP	limited liability partnerships
MD&A	management discussion and analysis
ORSA	Own Risk and Solvency Assessment
PIE	public interest entities
PRA	Prudential Regulation Authority
PRA SS3/19	Prudential Regulation Authority Supervisory Statement 3/19
TCFD	Taskforce on Climate-related Financial Disclosures
TPR	The Pension Regulator
UK	United Kingdom

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> The UK will become the first country in the world to make Task Force on Climate-related Financial Disclosures (TCFD) aligned disclosures fully mandatory across the economy by 2025, going beyond the 'comply or explain' approach.
>
> The Rt Hon Rishi Sunak, Chancellor of the Exchequer, United Kingdom, November 2020[1]

I. Introduction

Regulators in Canada and elsewhere are at a crossroads on climate-related financial disclosure and governance. Jurisdictions such as the United Kingdom (UK), New Zealand, and the European Union (EU) are pulling ahead in terms of meaningful regulation that requires disclosure of material climate-related risks and opportunities for companies, financial institutions, pension funds, and other institutional investors. These measures are aimed at levelling the playing field, allowing meaningful, transparent financial disclosure that is comparable year over year and between companies and sectors. As the Chancellor of the Exchequer observed in the above quote, the UK is moving beyond a comply-or-explain approach to disclosure to one that is mandatory and comprehensive, with the goal of creating meaningful regulatory oversight of the UK's transition towards net-zero greenhouse gas (GHG) emissions.

This briefing note looks specifically at the UK regulatory initiatives in mandatory climate-related financial disclosure aligned with the Financial Stability Board's (FSB) Taskforce on Climate-related Financial Disclosures (TCFD). The UK, along with the United States (US), are the two jurisdictions that most influence Canadian corporate, securities, financial services, and pension law and policy. Regulators in Canada and elsewhere are considering regulatory changes to accelerate the transition towards net-zero carbon emissions. We can learn from regulators that have already adopted measures, in particular, the recent activities of the UK Government.

This briefing note includes some of the background developments after release of the TCFD Final Report in 2017, because the UK process commenced with voluntary discussions, moved to proposals for a comply-or- explain approach, and then moved to a mandatory disclosure policy decision. After a discussion of overall developments and current timelines, the brief offers greater detail on specific rules promulgated by the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA), as well as the proposals for climate-related disclosure for pension funds and privately-held companies. It ends with a brief description of

[1] UK Government, 'Chancellor sets out ambition for future of UK financial services', (9 November 2020), Chancellor sets out ambition for future of UK financial services - GOV.UK (www.gov.uk).

some of the public reaction by financial institutions, asset managers, investors, issuers, and accounting and legal professionals. Overall, the UK Government has worked closely with market participants to develop the path to mandatory TCFD-aligned disclosure, leading to little or no public criticism of the policy decision to move to mandatory disclosure.

II. Background and Developments Leading to the UK Mandatory TCFD-aligned Disclosure

In June 2019, the UK Government legislated a path towards net-zero GHG emissions; the target requires the UK to bring all GHG emissions to net zero by 2050, with interim GHG emission reduction targets, called 'carbon budgets'.[2] The fifth carbon budget requires the equivalent of 57% reduction in emissions relative to 1990 levels from across the UK economy by 2032.[3] The proposed sixth carbon budget moves the goal post up, with a pledge to reduce emissions by at least 68% by 2030.[4] Its recommended pathway requires a 78% reduction in UK territorial emissions by 2035 (from 1990 levels), which is a 63% reduction since 2019, bringing forward the UK's previous 80% target by nearly 15 years.[5] In April 2021, the UK Government endorsed the sixth carbon budget, incorporating the UK's share of international aviation and shipping emissions for the first time. The legislation is currently before Parliament.[6]

In July 2019, the UK Government published its Green Finance Strategy, setting out its vision for transforming the financial system for a greener future.[7] The Green Finance Strategy recognized the need for high-quality disclosure on how organisations will manage the material financial risks and opportunities arising from climate change, which will improve

[2] UK Department for Business, Energy & Industrial Strategy, 'Consultation on requiring mandatory climate-related financial disclosures by publicly quoted companies, large private companies and Limited Liability Partnerships (LLPs)', (March 2021), at 12 Consultation on requiring mandatory climate-related financial disclosures by publicly quoted companies, large private companies and Limited Liability Partnerships (LLPs). (publishing.service.gov.uk) (hereafter BEIS Consultation on requiring mandatory climate-related financial disclosures).

[3] *Ibid.*

[4] UK Climate Change Committee, 'The Sixth Carbon Budget The UK's path to Net Zero', (December 2020), Presented to the Secretary of State pursuant to section 34 of the *Climate Change Act* 2008, at 13, The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf (theccc.org.uk) (hereafter Sixth Carbon Budget).

[5] *Ibid.*

[6] UK Government, 'UK enshrines new target in law to slash emissions by 78% by 2035', (20 April 2021), UK enshrines new target in law to slash emissions by 78% by 2035 - GOV.UK (www.gov.uk). UK Minister of State for Business, Energy and Clean Growth Department for Business, Energy and Industrial Strategy, Parliament, 'The Carbon Budget Order 2021', Draft Order laid before Parliament under sections 8(3) and 91(1) of the Climate Change Act 2008, for approval by resolution of each House of Parliament, (not yet in force as of May 31, 2021), The Carbon Budget Order 2021 (legislation.gov.uk) (hereafter Carbon Budget Order). UK Climate Change Committee, 'Sixth Carbon Budget: CCC lauds historic milestone on path to Net Zero UK', (20 April 2021), Sixth Carbon Budget: CCC lauds historic milestone on path to Net Zero UK - Climate Change Committee (theccc.org.uk).

[7] UK Government, *Green Finance Strategy, Transforming Finance for a Greener Future,* (July 2019), Green Finance Strategy, BEIS Green Finance Strategy July 2019 (publishing.service.gov.uk) (hereafter *Green Finance Strategy*).

transparency and encourage more informed pricing and capital allocation.[8] The Government has stated that the structure of the TCFD recommendations is specifically designed to promote organisational change that embeds appropriate behaviours into organisational culture so that climate change is considered at all levels of an organisation, and that it is important that this behavioural change process is applied across all economically significant companies.[9]

The UK has five financial regulators accountable to different departments within government and the Bank of England:

> The Prudential Regulation Authority (PRA) is part of the Bank of England and is responsible for promoting the safety and soundness of approximately 1,500 entities.[10] It regulates and supervises all the major banks, building societies, credit unions, insurers, and major investment firms in the UK, aimed at ensuring an appropriate degree of protection for depositors and policyholders. Prudential regulation rules require financial firms to hold sufficient capital and have adequate risk controls in place.[11]
>
> The Financial Conduct Authority (FCA), working with Her Majesty's Treasury (HM Treasury), is the conduct regulator for about 56,000 financial services firms in UK financial markets and the prudential regulator for over 18,000 of those firms. As conduct authority, it protects consumers. It regulates the providers of contract-based pensions; and oversees disclosure when companies wish to sell shares or debt through an initial public offering (IPO) on the London Stock Exchange and in subsequent capital raisings and/or major transactions.[12]
>
> The Financial Reporting Council (FRC) is an independent quasi-regulatory private body that has been given a mandate by the Department for Business, Energy and Industrial Strategy (BEIS) to set and oversee the UK's Corporate Governance and Stewardship Codes and UK standards for accounting, auditing and actuarial work, charged with monitoring the quality of corporate annual reporting, and auditing.[13]

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[8] *Ibid.*

[9] BEIS Consultation on requiring mandatory climate-related financial disclosures, note 2 at 12.

[10] Bank of England, 'Which firms does the PRA regulate?', (May 2021), Which firms does the PRA regulate? | Bank of England. Both PRA and the Financial Conduct Authority were created in 2013 in the wake of the global financial crisis. Previously it was a unified regulator, the Financial Services Authority; Bank of England, 'What Is the PRA?', (2021), What is the Prudential Regulation Authority (PRA)? | Bank of England.

[11] Bank of England, 'What Is the PRA?', *ibid.*

[12] UK House of Commons Environmental Audit Committee, 'Greening Finance: embedding sustainability in financial decision making Seventh Report of Session 2017–19', (4 June 2018), at 36, Greening Finance: embedding sustainability in financial decision making (parliament.uk) (hereafter Greening Finance).

[13] *Ibid* at 34.

> The Pensions Regulator (TPR), working with the Department for Work & Pensions (DWP), is the public body that protects workplace pensions in the UK. It is responsible for monitoring and enforcing rules on pension governance for trust-based pension schemes.
>
> The Financial Policy Committee (FPC), within the Bank of England, identifies, monitors, and takes action to remove or reduce systemic risks with a view to protecting and enhancing the resilience of the UK financial system.[14]

The regulatory and supervisory oversight functions of these regulators overlap in a number of instances, requiring a high degree of cooperation in moving towards TCFD-aligned mandatory disclosure.

An industry-led Green Finance Taskforce, established by the Government as part of the Clean Growth Strategy, published a report in March 2018 recommending that the UK Government and its financial regulators integrate the TCFD recommendations throughout the existing UK corporate governance and reporting framework.[15] It called on relevant financial regulators to clarify in their guidelines that disclosing climate change risks is already mandatory under existing law and practice where the risks are financially material.[16]

By mid-2018, 63 UK-incorporated organisations had committed to support or adopt the TCFD recommendations, including both publicly-listed companies and pension funds.[17] The UK House of Commons Environmental Audit Committee reported in 2018:

> The full range of financial entities listed by the TCFD should be making climate-related financial disclosures. We need to see a 'green thread' running through the investment chain. This would ensure that climate risks and opportunities are considered at every point in the investment chain. The Government should set out in its response to this report what specific actions it will take to encourage take up.[18]

The UK House of Commons Environmental Audit Committee also noted that:

> Pension scheme trustees have a fiduciary duty to take account of risks, whether over the long or short term, wherever they are financially material. Pension schemes will often have long investment horizons, holding members' savings for many decades. Consequently, it is particularly appropriate that pension scheme trustees do consider risks over the long-term. We agree that the Government should clarify that

[14] *Ibid* at 33.

[15] Green Finance Taskforce, 'Accelerating Green Finance', (March 2018), at 8, Accelerating green finance: a report by the Green Finance Taskforce (publishing.service.gov.uk) (hereafter Green Finance Taskforce).

[16] *Ibid.*

[17] Greening Finance, note 12 at 22.

[18] *Ibid* at 23.

> trustees have a fiduciary duty to consider risk and opportunities in the long-term, including environmental risks. We have therefore consulted on amendments to the Occupational Pension Schemes (Investment) Regulations 2005 and are analysing the responses. We are proposing that trustees will be required to set out how they take account of financially material risks and opportunities including those arising from environmental, social, governance and climate change considerations. The influence of these types of considerations will most often be felt over the long term.[19]

Following the FCA's appearance before it in 2018, the House of Commons Environmental Audit Committee concluded that it was "not convinced that the regulator (FCA) understands the material risks that climate change poses".[20] Evidence presented to its inquiry revealed inadequacies in how the UK's framework of financial regulation was monitoring climate change risk management, the House of Commons Committee concluding that "among financial regulators in the UK, only the Bank of England and its Prudential Regulation Authority have given the issue the serious attention it requires".[21]

Subsequently, a Whitehall/cross-regulator UK TCFD Taskforce was established in 2019 to explore the most effective approach to climate-related disclosures in line with the Green Finance Strategy recommendations.[22]

In 2019, the FCA committed to consulting on new rules for listed companies in alignment with TCFD,[23] part of a wider consultation on climate change, green finance, and the TCFD framework that it commenced in 2018.[24] In 2020, it proposed a new rule on a comply-or-explain approach to climate-related disclosure for premium listed issuers, rather than mandatory TCFD disclosure; [25] but expressly stated that the new rule is a step towards TCFD-aligned disclosure.[26] A premium listed issuer refers to issuers with "equity shares issued by trading companies and investment entities", and premium listed companies must "comply with the UK's highest standards of regulation and corporate governance".[27]

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[19] House of Commons Environmental Audit Committee, 'Greening Finance: embedding sustainability in financial decision making: Government Response to the Committee's Seventh Report', (1 November 2018), Greening Finance: embedding sustainability in financial decision making: Government Response to the Committee's Seventh Report (parliament.uk) (hereafter Greening Finance, embedding sustainability).
[20] Greening Finance, note 12 at 37.
[21] *Ibid* at 39.
[22] HM Treasury et al, 'A Roadmap towards mandatory climate-related disclosures', (November 2020), at 3, FINAL_TCFD_ROADMAP.pdf (publishing.service.gov.uk) (hereafter UK TCFD Roadmap).
[23] PRA, 'FS19/6: Climate Change and Green Finance: summary of responses and next steps', (October 2019), FS19/6: Climate Change and Green Finance: summary of responses and next steps (fca.org.uk).
[24] PRA, 'DP18/8: Climate Change and Green Finance', (October 2018), DP18/8: Climate Change and Green Finance (fca.org.uk).
[25] PRA, 'CP20/3, Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations', (March 2020), CP20/3: Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations (fca.org.uk) (hereafter PRA, CP20/3).
[26] *Ibid* at 4.
[27] London Stock Exchange Group, 'Routes to Main Market', (2021), Main Market Companies | LSEG. In contrast, the London Stock Exchange notes that "The Standard segment is open to issuance of equity shares, Global Depositary Receipts (GDR), debt securities, and securitized derivatives that are required to

In 2020, the UK Government canvassed the 25 largest UK pension funds, responsible for £550 billion of long-term investments, to seek evidence as to how climate change risk was, or was not, being incorporated into these investors' long-term investment decision-making.[28] At that time, only seven of the 25 largest pension funds had committed to report in line with the TCFD, the House of Commons Committee noting that several top pension funds did not appear to have given climate change much strategic thought, which was creating risks for beneficiaries.[29] The Committee recommended that TCFD reporting become a mandatory requirement for all large asset owners by 2022.[30]

III. Current Initiatives and Timelines for Companies, Financial Institutions, and Institutional Investors

The move to mandatory disclosure is part of the UK's broader strategy to decarbonize the UK economy. The Government has tabled the Carbon Budget Order 2021, which must be passed by both Houses of Parliament, still pending in May 2021.[31] Its Committee on Climate Change's 448-page proposed roadmap to bring the sixth carbon budget into effect reports:

> Low carbon investment must scale up to £50 billion each year to deliver Net Zero, supporting the UK's economic recovery over the next decade. This investment generates substantial fuel savings, as cleaner, more-efficient technologies replace their fossil-fuelled predecessors. In time, these savings cancel out the investment costs entirely – a vital new insight that means our central estimate for costs is now below 1% of GDP throughout the next 30 years.[32]

The UK sixth carbon budget is summarized as follows:

> • Budget level. The Sixth Carbon Budget (i.e. the legal limit for UK net emissions of greenhouse gases over the years 2033-37) should be set at 965 MtCO2e, implying a 78% reduction from 1990 to 2035.
>
> • Budget scope. The budget should cover all greenhouse gas emissions, including those from international aviation and shipping, and removals of CO_2 from the atmosphere (e.g. through afforestation or engineered removals such as bioenergy with carbon capture and storage). The Committee does not consider the previous approach of allowing

comply with EU minimum requirements. A Standard Listing allows issuers to access the Main Market by meeting EU harmonised standards.' and the "new High Growth Segment is subject to the EU minimum standards and the HGS rulebook issued by London Stock Exchange. The segment is designed specifically for high growth, revenue generating businesses incorporated in an EEA state, that over time are aspiring to the join the Premium segment." *Ibid.*

28 Greening Finance, note 12 at 23.

29 *Ibid* at 24.

30 *Ibid* at 25.

31 Carbon Budget Order, note 6.

32 Sixth Carbon Budget, note 4 at 5.

‘headroom’ for international aviation and shipping emissions to be sufficient given the importance of these emissions and the risk of their different treatment in UK legislation being seen as unfair by other sectors.

• Domestic action. Performance against the budget should be judged based on actual UK emissions (net of removals), without recourse to international carbon units (often referred to as ‘credits’). The Government could choose to use credits to go beyond the budget as a greater international contribution. Emissions trading can be a useful policy lever to reduce actual UK emissions (net of removals) as required to meet the recommended budget.

• Net Zero Strategy. We recommend that the Government legislates our recommended Sixth Carbon Budget as soon as possible and sets out its Net Zero plans and policies in the first half of 2021 (many of which have been under development since 2019) to deliver in full against the budget. The expected impact of policies, including those in early planning, should be clearly quantified and in sum be enough to meet the budget and the 2030 NDC.[33]

At the core of the carbon budget is scenario testing over multiple scenarios with realistic assumptions to explore uncertainties, changing behaviours, and the speed of developing and scaling up new technologies.[34] The UK Government has identified priorities and specific targets for each sector of the economy.[35] It acknowledges that an important challenge is to identify where jobs may be lost and to support workers to transition to the new low-carbon workforce.[36] The Government must set the sixth carbon budget in law by the end of June 2021, followed, as soon as is practicable, by a set of policies that demonstrably would meet the budget.[37] The Government will monitor with a forward-looking perspective, and has announced that it will develop a new set of progress indicators based on the Balanced Net Zero Pathway set out in sixth carbon budget, tracking progress in each sector of the economy.[38]

In monitoring development of policy in each sector, the UK government will consider the following questions: Is there a clear long-term direction? Are there investable incentives for low-carbon options? Are barriers to action being tackled? Is policy preparing for future challenges as well as current ones? Is policy addressing the particular issues for that sector, for example fuel poverty or competitiveness?[39] The carbon budget order does not apply to activities that are undertaken by small businesses.[40]

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[33] Sixth Carbon Budget, note 4 at 15.
[34] *Ibid* at 24.
[35] *Ibid* at 29-30.
[36] *Ibid* at 22.
[37] *Ibid* at 31.
[38] *Ibid* at 444.
[39] *Ibid.*
[40] UK Department for Business, Energy and Industrial Strategy, ‘Explanatory Memorandum to the Carbon Budget Order 2021, The Carbon Budget Order 2021 (legislation.gov.uk).

In terms of initiatives for businesses and investors, the FCA and the PRA have jointly established and co-chair the Climate Financial Risk Forum, in which senior financial industry representatives and regulators cooperate to advance financial sector responses to climate-related financial risks and opportunities.[41] Membership includes five banks, five insurance companies, six asset managers, and other participants such as the London Stock Exchange.[42] The Climate Financial Risk Forum has published a guide to help financial firms understand the risks and opportunities that arise from climate change, and to provide support for how to integrate them into their risk, strategy, and decision-making processes.[43] Four Working Groups created guidance on TCFD core elements of risk management, scenario analysis, disclosures, and innovation as the agreed-upon key priorities in enabling firms to develop an effective and robust approach to responding to climate-related financial risks and opportunities.[44] The Climate Financial Risk Forum next plans a dedicated workstream on climate data, metrics, and methodologies.[45]

In November 2020, the UK Government announced it would introduce fully mandatory climate-related TCFD-aligned financial disclosure requirements across the UK economy by 2025, with a significant portion of mandatory requirements in place by 2023.[46] Its rationale included:

> Markets need the right information if they are to align their activities with the transition of the UK and global economy as the UK seeks to deliver on its climate targets. A better flow of information on the risks and opportunities posed by climate change will ensure informed and efficient capital allocation, and encourage a more orderly transition by helping to channel investment to organisations that are supporting the transition to a lower-carbon economy.
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> If information on organisations' climate-related exposures is incomplete or of poor quality, the future risks to individual financial firms and to financial stability could be considerable.
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> . . .

[41] Climate Financial Risk Forum, established in 2019, Climate Financial Risk Forum (CFRF) | FCA.
[42] Climate Financial Risk Forum, Climate Financial Risk Forum Guide*,* (June 2020), at 9, Climate Financial Risk Forum Guide 2020 - Summary (fca.org.uk) (hereafter Climate Financial Risk Forum Guide).
[43] Climate Financial Risk Forum Guide, *ibid* at 5.
[44] *Ibid* at 11. See the Climate Financial Risk Forum Guide Risk Management Chapter at Climate Financial Risk Forum Guide 2020 - Risk management chapter (fca.org.uk); Scenario Analysis Chapter at Climate Financial Risk Forum Guide 2020 - Scenario Analysis chapter (fca.org.uk); Disclosures Chapter at Climate Financial Risk Forum Guide 2020 - Disclosures chapter (fca.org.uk) and Innovation Chapter at Climate Financial Risk Forum Guide 2020 - Innovation chapter (fca.org.uk).
[45] Financial Services Regulatory Initiatives Forum, 'Regulatory Initiatives Grid May 2021', (May 2021), at 9, Regulatory Initiatives Grid - May 2021 (fca.org.uk) (hereafter Regulatory Initiatives Grid May 2021).
[46] HM Treasury, Interim Report Interim Report of the UK's Joint Government-Regulator TCFD Taskforce, (November 2020) at 2-3, FINAL_TCFD_REPORT.pdf (publishing.service.gov.uk) (hereafter UK TCFD Taskforce). The officials-led UK Taskforce is chaired by HM Treasury and attended by the following organisations: the Department for Business, Energy and Industrial Strategy; the Department for Work and Pensions; the Local Government Pension Scheme; the Bank of England (the Prudential Regulation Authority); the Financial Conduct Authority; the Financial Reporting Council; and the Pensions Regulator.

> Mandatory TCFD-aligned disclosures would require that organisations provide decision-useful information to help: (i) build awareness of climate-related risks, opportunities and impacts across the economy, (ii) integrate assessment and management of these risks, opportunities and impacts, (iii) inform investment decisions, improving market effectiveness through more efficient pricing and allocation of capital, empowering stewardship and driving economic change to support the transition to a lower carbon economy and resilience to physical climate risks, (iv) stimulate the development of green financial products – and competition between providers of these products – with follow on benefits for consumers.[47]

In shifting its commitment to mandatory climate-related disclosures across the UK economy aligned with the TCFD,[48] the UK Government stated that "given the urgency of the climate threat, a voluntary approach to climate-related financial disclosure may not be sufficient" and therefore the government and regulators must consider moving towards mandatory TCFD-aligned disclosures across non-financial and financial sectors of the UK economy to help accelerate progress.[49]

In setting out a roadmap for action, the UK Government signalled that it has an "ambitious but proportionate strategy" to ensure that the "right information on climate-related risks and opportunities is available across the investment chain – from companies in the real economy, to financial services firms, to end-investors".[50] The Government has aligned these efforts with its initiatives to rebuild the economy post-pandemic by focusing on supporting a clean, inclusive and resilient 'green recovery'.[51]

The UK's 2020 Roadmap towards mandatory TCFD-aligned disclosures, jointly published by the HM Treasury, FCA, BEIS, DWP and TPR, sets out a path for the introduction of regulatory rules and legislative requirements over the next five years.[52] It is referred to as an 'indicative path', with most embedding of comprehensive and high-quality information on how climate-related risks and opportunities are being managed across the UK economy taking place in the next three years.[53] It plans that disclosures will increase each year as new regulatory or legislative measures come into force, subject to the outcomes of relevant regulators' and government departments' consultation processes and other statutory requirements such as cost-benefit analysis.[54]

In its Green Finance Strategy, the Government announced that all UK-listed issuers and large asset owners would be making disclosures in accordance with the TCFD's recommendations

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[47] UK TCFD Taskforce, note 46 at 7-9.
[48] UK TCFD Roadmap, note 22. TCFD, *Final Report, Recommendations of the Task Force on Climate-related Financial Disclosures,* (2017), FINAL-2017-TCFD-Report-11052018.pdf (bbhub.io) (TCFD Final Report).
[49] UK TCFD Roadmap, note 22 at 3.
[50] *Ibid* at 2.
[51] *Ibid*.
[52] UK TCFD Taskforce, note 46 at 11.
[53] UK TCFD Roadmap, note 22 at 3.
[54] *Ibid* at 3.

by 2022.[55] Its goal is to enhance the UK as a global financial hub to drive the greening of the international financial system. Its public policy rationale is clear. The Government has stated:

> High-quality disclosures about how organisations and assets will be impacted by – and impact – environmental change will improve transparency, encouraging better informed pricing and capital allocation. This in turn should drive investment in more sustainable projects and activities.[56]

The Government's focus has been on decision-useful information, linked to the TCFD's four-part framework: governance, strategy, risk management, and metrics and targets, and the 11 recommended disclosures under these core parts of the framework that provide more granular detail on the information to be disclosed.[57]

Seven categories of organisations will be subject to the mandatory disclosure: listed commercial companies, UK-registered companies, banks and building societies, insurance companies, asset managers, life insurers and FCA-regulated pension schemes, and occupational pension schemes.[58] The UK Government is encouraging entities in each category to take the necessary steps now to build their capabilities and iteratively refine their climate data and the resulting disclosures, understanding the path towards mandatory disclosure.[59] The details and timing of implementation will be determined by the relevant regulator or government department, each setting milestones for implementation.[60]

For some categories of organisation, the Government expects that disclosure obligations will initially be introduced with some flexibility in the compliance basis, in order to take account of known data limitations or other challenges.[61] In this respect, it is allowing entities to "provide a reasoned explanation if they have not made complete disclosures".[62] As an alternative, some regulations may allow for disclosures to be made on an 'as far as able' basis.[63]

The Government's rationale for selecting the timing it did includes that the benefits of mandatory disclosures are likely to increase with an organisation's size, *ie,* a listed company's market capitalisation or an investor's assets under management; its wider connections to the real economy or societal impact; or the level of dependence on its information by others in the investment chain.[64] While the UK Green Finance Taskforce acknowledged that it may not be proportionate for smaller organisations to undertake detailed disclosure at this time, it concluded that some smaller organisations such as financial services firms with monoline

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[55] Green Finance Strategy, note 7. See also BEIS Green Finance Strategy July 2019 (publishing.service.gov.uk).
[56] UK TCFD Roadmap, note 22 at 2.
[57] *Ibid* at 3.
[58] *Ibid*.
[59] *Ibid.*
[60] *Ibid* at 4.
[61] *Ibid.*
[62] *Ibid.*
[63] *Ibid*.
[64] UK TCFD Taskforce, note 46 at 17.

business models attract high concentrations of climate risk, and thus, it is important that these firms clearly understand and disclose climate risks.[65]

The UK Green Finance Taskforce has reported that in order to promote consistent, comparable, and enforceable disclosures, it expects that it may be necessary, in due course, to consider setting more detailed expectations for disclosures to supplement the TCFD principles-based recommendations, with more detailed expectations, particularly in relation to quantitative disclosures, including metrics, targets, and scenarios.[66] Precise timing of these more detailed requirements will take account of capabilities and data challenges that still need to be resolved.[67] In developing the implementation timelines, account will be taken of statutory requirements by some sectoral regulators to consult publicly on proposed new rules and to undertake cost-benefit analysis, and implementation lead-times for affected organisations will accommodate the need to build systems, controls, and processes to support compliance.[68]

The UK Green Finance Taskforce strongly supports the International Financial Reporting Standards (IFRS) Foundation's proposal to create a new, global Sustainability Standards Board, as well as complementary work underway on harmonization by an alliance of voluntary standard-setting organisations.[69]

The Financial Services Regulatory Initiatives Forum was launched to strengthen coordination between representatives of the Bank of England, PRA, FCA, the Payment Systems Regulator, the Competition and Markets Authority, the Information Commissioner's Office, the Pensions Regulator and the FRC, with HM Treasury as an observer member.[70] The Forum does not have policy decision-making responsibility, its purpose is to share information on, and review the timing of, regulatory initiatives with a view to considering the operational impact of their implementation.[71] The core membership of the Forum will maintain and publish a joint Regulatory Initiatives Grid of regulatory initiatives twice annually, which will communicate the Forum members' views of the timing of publicly-announced regulatory initiatives over a two-year timeframe.[72] It will include initiatives that will, or may, have a significant operational impact on firms. The most recent is the "Regulatory Initiatives Grid May 2021", discussed below.[73]

The next parts turn to more specific information on the PRA, FCA and BEIS, with particular emphasis on policies and regulations that may assist Canadian and other regulators in their next stages of regulatory policy development.

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[65] *Ibid*.
[66] *Ibid* at 18.
[67] *Ibid*.
[68] *Ibid*.
[69] UK TCFD Roadmap, note 22 at 9.
[70] Financial Services Regulatory Initiatives Forum, 'The Financial Services Regulatory Initiatives Forum Terms of reference', Financial Services Regulatory Initiatives Forum - Terms of reference (fca.org.uk).
[71] *Ibid* at 1.
[72] *Ibid.*
[73] Regulatory Initiatives Grid May 2021, note 45 at 5.

1. Bank of England and its Prudential Regulation Authority

In 2019, the Bank of England PRA issued a supervisory statement that applied to all UK insurance and reinsurance firms and groups, banks, building societies, and PRA-designated investment firms (collectively 'firms').[74] For the banking and insurance sectors, climate-related financial disclosures are now required by Supervisory Statement 3/19 (PRA SS3/19).[75] It states:

> 3.2 The PRA expects a firm's board to understand and assess the financial risks from climate change that affect the firm, and to be able to address and oversee these risks within the firm's overall business strategy and risk appetite. The approach should demonstrate an understanding of the distinctive elements of the financial risks from climate change and a sufficiently long-term view of the financial risks that can arise beyond standard business planning horizons.
>
> 3.3 Where appropriate, the PRA will expect to see evidence of how the firm monitors and manages the financial risks from climate change in line with its risk appetite statement. The risk appetite statement should include the risk exposure limits and thresholds for the financial risks that the firm is willing to bear, and should take into account factors such as:
>
> - long-term financial interests of the firm, and how decisions today affect future financial risks;
> - results of stress and scenario testing, for shorter and longer time horizons;
> - uncertainty around the timing and the channels through which the financial risks from climate change may materialise; and
> - sensitivity of the balance sheet to changes in key risk drivers and external conditions.[76]

The deadline for fully embedding the supervisory expectations set out in PRA SS3/19 is 31 December 2021. The PRA will perform a review of firms' published disclosures in 2022, which it will use to inform its decision whether to introduce further measures to improve quantity, quality, and/or consistency of disclosures. Similarly, PRA-regulated firms are required to

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[74] Bank of England, Prudential Regulation Authority, 'Supervisory Statement | SS3/19 Enhancing banks' and insurers' approaches to managing the financial risks from climate change', (15 April 2019), at 1, SS319 (bankofengland.co.uk) (hereafter PRA, SS3/19). The supervisory statement "is relevant to all UK insurance and reinsurance firms and groups, ie those within the scope of Solvency II including the Society of Lloyd's and managing agents ('Solvency II firms') and non-Solvency II firms, (collectively referred to as 'insurers'), banks, building societies, and Prudential Regulation Authority (PRA) designated investment firms (collectively referred to as 'banks')". See also PRA, 'Policy Statement | PS11/19 Enhancing banks' and insurers' approaches to managing the financial risks from climate change', (April 2019) PS11/19 - Enhancing banks' and insurers' approaches to managing the financial risks from climate change (bankofengland.co.uk).

[75] PRA, SS3/19, *ibid* at 4.

[76] *Ibid*.

disclose material risks within their Pillar 3 disclosure,[77] but may choose to disclose climate risks through a combination of audited financial statements, the Annual Report, and Pillar 3 disclosures.[78]

PRA SS3/19 specifies that the PRA expects firms to have clear roles and responsibilities for the board in managing the financial risks from climate change, including allocating specific responsibility for identifying and managing climate-related financial risks to the board and to the highest level of executive management.[79] The PRA states that it expects to see evidence that the board and its relevant sub-committees exercise effective oversight of risk management and controls and expects the board to ensure that adequate resources and sufficient skills and expertise are devoted to managing the financial risks from climate change.[80] PRA SS3/19 states that as part of the Internal Capital Adequacy Assessment Process (ICAAP) or Own Risk and Solvency Assessment (ORSA), firms should include, at a minimum, all material exposures relating to the financial risks from climate change, and disclosure and assessment of how firms have determined the material exposures in the context of their business.[81]

i. Quantitative and qualitative monitoring tools and metrics

PRA SS3/19 requires firms to consider a range of quantitative and qualitative assessment tools and metrics;[82] and to consider engaging with the TCFD framework and other initiatives in developing their approach to climate-related financial disclosures.[83] In terms of risk monitoring, the SS3/19 specifies:

> 3.8 Where appropriate, the PRA expects firms to consider a range of quantitative and qualitative tools and metrics to monitor their exposure to financial risks from climate change. For example, these could be used to monitor exposures to climate-related risk factors which could result from changes in the concentration of firms' investment or lending portfolios, or to the potential impact of physical risk factors on outsourcing arrangements and supply chains. The PRA expects that these metrics and tools will evolve and mature over time as firms gain experience.
>
> 3.9 Firms should also use these metrics to monitor progress against their overall business strategy and risk appetite. The metrics should be updated regularly to support decision making by the firm's board

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[77] Prudential sourcebook for Banks, Building Societies and Investment Firms, 11.pdf (fca.org.uk).
[78] PRA, SS3/19, note 74 at 7.
[79] *Ibid* at 4.
[80] *Ibid* at 4-5.
[81] *Ibid* at 5. See also SS31/15 'The Internal Capital Adequacy Assessment Process (ICAAP) and the Supervisory Review and Evaluation Process (SREP)', April 2018: https://www.bankofengland.co.uk/prudential-regulation/publication/2013/the-internal-capital-adequacy-assessment-process-and-supervisory-review-ss.
[82] PRA, SS3/19, note 74 at 5.
[83] *Ibid* at 8.

> and/or relevant sub-committees. Firms should set out circumstances which would trigger a review of its strategy for addressing the financial risks from climate change.[84]

Where risk is material, PRA SS3/19 sets out the following requirements:

> Risk management and mitigation
>
> 3.10 Where the potential impacts of the financial risks from climate change are assessed to be material (for example as a result of scenario analysis), the PRA expects firms to evidence how they will mitigate these financial risks and to have a credible plan or policies in place for managing exposures. This could include actions the firm is taking to reduce concentrations of these risks. Plans should be reflective of the distinctive elements of the financial risks from climate change, so may differ from other risks.
>
> 3.11 For Solvency II insurers, under the Prudent Person Principle (PPP) an undertaking should only invest in assets for which risks can be identified, measured, monitored, managed, controlled, and reported. A key requirement of the PPP for the purposes of this SS is that, where insurers bear the investment risk, insurers must diversify their assets to avoid excessive accumulation of risk in the investment portfolio. Solvency II insurers should therefore consider whether there is an excessive accumulation of financial risks from climate change (particularly those likely to crystallise via the transition risk factor) in their investment portfolio, and consider mitigants when this is the case.
>
> 3.12 To inform their risk assessment and management, firms should seek to understand the potential current and future impacts of the physical and transition risk factors on their clients, counterparties, and organisations in which the firm invests or may invest. To the extent that firms do not have the necessary information, firms are expected to engage with clients and counterparties where this information is considered material to a firm's own risks. Firms could also consider using data from publicly available sources or working together with external experts to collect (asset-level) data.[85]

The Climate Financial Risk Forum in 2020 published a guide written by industry for industry to help financial firms approach and address climate-related financial risks.[86] The guide provides practical recommendations to firms of all sizes on disclosure of climate-related

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[84] *Ibid* at 5.
[85] *Ibid* at 5-6.
[86] Climate Financial Risk Forum, 'Forum publishes its guide to help the financial industry address climate-related financial risks', (29 June 2020), The Climate Financial Risk Forum publishes its guide to help the financial industry address climate-related financial risks | Bank of England.

financial risks, effective risk management, scenario analysis, and opportunities for innovation in the interest of consumers.[87]

ii. Scenario testing

In November 2020, the Bank of England and its PRA recommended a Climate Biennial Exploratory Scenario, a stress test of the resilience of the largest UK banks and insurers to different possible climate pathways, with plans to publish the scenarios in June 2021 and to receive participants' initial submissions by October 2021.[88]

PRA SS3/19 recommends that firms use scenario analysis.[89] Where proportionate, the PRA "expects firms to conduct scenario analysis to inform their strategic planning and determine the impact of the financial risks from climate change on their overall risk profile and business strategy."[90] The PRA suggests using scenario analysis "to explore the resilience and vulnerabilities of a firm's business model to a range of outcomes", with approaches to evolve and mature over time.[91] PRA SS3/19 states that the PRA expects a firm's scenario analysis to address a range of outcomes relating to different transition paths to a low-carbon economy, and a path where no transition occurs.[92] It suggests that scenario analysis should, where appropriate, include the following:

> 3.15 The PRA expects a firm's scenario analysis to address a range of outcomes relating to different transition paths to a low-carbon economy, and a path where no transition occurs. The scenario analysis should, where appropriate, include a:
>
> - short-term assessment which sets out the firm's exposure to the financial risks from climate change within its existing business planning horizon, including, where appropriate, the quantification of these risks; and
> - longer term assessment of the firm's exposure, based on its current business model, of a range of different climate-related scenarios. For example: scenarios based around average global temperature increases consistent with, or in excess of 2˚C; and scenarios where the transition to a low-carbon economy occurs in an orderly manner, or not.
>
> The PRA expects the time horizon of this long-term assessment to be in the order of decades. As with other types of scenario analysis, this is not intended to be a precise forecast, but a qualitative exercise used to inform strategic planning and decision making.

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87 Climate Financial Risk Forum Guide, Risk Management Chapter, note 44; Disclosures Chapter, note 44; Scenario Analysis Chapter, note 44; and Innovation Chapter, note 44.
88 Regulatory Initiatives Grid May 2021, note 45 at 8.
89 PRA, SS3/19, note 74 at 6.
90 *Ibid.*
91 *Ibid.*
92 *Ibid.*

> 3.16 The PRA expects firms to use these scenarios to understand the impact of the financial risks from climate change on their solvency, liquidity and, for insurers, their ability to pay policyholders. Where a firm relies on management actions to mitigate the financial risks from a scenario, it should consider whether these are realistic, credible, consistent with regulatory expectations, and achievable. For example, it should not rely on the existence of a liquid market to sell the assets it has identified as being exposed. Firms should also consider whether any of the actions identified should be taken in advance as precautionary measures, or whether they would be relevant or desirable only if the scenario emerges.[93]

The Climate Financial Risk Forum Guide Scenario Analysis Chapter sets out guidance on how to identify potential exposures climate-related financial risks; discusses how firms can identify and develop suitable climate-related scenarios, taking into account their potential exposures; offers tips on how to focus on the assessment of quantifiable risks and deal with how firms can then assess the financial impact of those scenarios on their business; and highlights the key challenges and barriers facing the financial industry's use of scenario analysis.[94]

iii. Disclosure

Key to effective TCFD-aligned disclosure of climate-related financial risks is transparency, consistency, and comparability. PRA SS3/19 sets out the PRA's expectations in respect of disclosure as follows:

> 3.18 Banks and insurers have existing requirements to disclose information on material risks within their Pillar 3 disclosures (as required under Capital Requirements Regulation (575/2013) (CRR) and Solvency II), and on principal risks and uncertainties in their Strategic Report (as required under the UK *Companies Act*).
>
> 3.19 In addition to meeting these existing disclosure requirements, firms should consider whether further disclosures are necessary to enhance transparency on their approach to managing the financial risks from climate change, in line with the expectations set out in this SS. In particular, all firms within the scope of this SS should consider disclosing how climate-related financial risks are integrated into governance and risk management processes, including the process by which a firm has assessed whether these risks are considered material or principal risks.
>
> 3.20 The PRA expects firms to develop and maintain an appropriate approach to disclosure, reflective of the distinctive elements of the

[93] *Ibid* at 7.
[94] Climate Financial Risk Forum Guide, Scenario Analysis Chapter, note 44.

financial risks from climate change. Firms should look to evolve their disclosures to make these as insightful as possible, and in particular should ensure they reflect the firms' evolving understanding of the financial risks from climate change. Firms should recognise the increasing possibility that disclosure will be mandated in more jurisdictions, and prepare accordingly.

The Disclosures Chapter of the PRA/FCA Climate Financial Risk Forum Guide provides best practice recommendations for financial institutions for public climate-related financial disclosures.[95] The chapter notes that:

> Disclosures should be the outcome of a process of change to governance, risk management and business strategy to build the resilience of the disclosing firm to the financial impacts of a changing climate. If done well they are part of a process to ensure the right people across the business (likely to be drawn from risk management, strategy, business development, audit, finance, marketing, executive leadership and board members as well as sustainability and corporate responsibility) are involved in discussions about how business strategy and risk management need to evolve to respond to the risks and opportunities posed by climate change.[96]

Drawing on the TCFD Final Report Annex,[97] it recommends seven principles for effective climate-related financial disclosures, specifically, that disclosures should:

- represent relevant information;
- be specific and complete;
- be clear, balanced, and understandable;
- be consistent over time;
- be comparable among companies within a sector, industry, or portfolio;
- be reliable, verifiable and objective; and
- be provided on a timely basis.[98]

It recommends that firms start with 'simple' disclosures and add complexity over time, increasing amounts of quantitative information added to complement qualitative disclosures.[99] The disclosure chapter also specifies that "Metrics and targets should aim to be comparable over time to enable users of disclosures to understand the firm's general direction" and firms should ensure "the methodology underpinning metrics and targets is

[95] Climate Financial Risk Forum Guide, Disclosures Chapter, note 44 at 3.
[96] *Ibid* at 5.
[97] TCFD, 'Appendix 3, Recommendations of the Task Force on Climate-related Financial Disclosures – Final Report', (2017), www.fsb-tcfd.org/wp-content/uploads/2019/06/2019-TCFD-Status-Report-FINAL-053119.pdf.
[98] Climate Financial Risk Forum Guide, Disclosure Chapter, note 44 at 8.
[99] *Ibid* at 10.

described in detail (in footnotes or online) so that users can assess consistency and comparability of targets and metrics and understand strengths and weaknesses."[100]

The Disclosures Chapter's best practice advice is relevant for all sizes and types of financial institution, whether listed or unlisted, providing guidance on how firms can strengthen their public climate-related financial disclosures.[101] The chapter notes that "While smaller firms may not have the capacity and resources to make disclosures as extensive as those made by larger firms – particularly in relation to the range of metrics suggested – some disclosure is still desirable, as it is a means to ensure both they and the users of their disclosures have considered the climate-related financial opportunities and risks they face."[102]

The Disclosures Chapter acknowledges that a number of different metrics of climate-related financial risk have emerged, which may confuse or overwhelm providers of, and audiences for, the information.[103] While the financial sector is developing consensus on the choice of metrics for disclosure, it suggests that regulators can indicate the principles by which they would like to see metrics selected, such as:

- the analysis and decision-making process that underpins disclosure;
- use of qualitative versus quantitative information, with encouragement to develop the latter;
- the need to ensure forward-looking statements comply with wider market regulations;
- the importance of considering longer-term as well as short-term timeframes;
- the need to explain the uncertainty in information being disclosed;
- the need for the information to be important to a reasonable investor in making an investment decision and/or its absence would significantly alter the mix of information available;
- the ability to be applied across sectors and geographies; and
- the importance of comparability over time *e.g*. year-on-year, against benchmarks, industry/sector standards or averages, and against targets.[104]

The Disclosures Chapter also discusses materiality, suggesting that by 2022, "firms should include all material climate-related financial disclosures and TCFD disclosures on governance and risk management (regardless of materiality) into audited financial statements and/or existing regulatory reporting, such as that mandated by Capital Requirements Regulation, in particular, Pillar III [3] disclosures."[105] It notes that the "PRA's April 2019 Supervisory

[100] *Ibid.*
[101] *Ibid* at 3.
[102] *Ibid.*
[103] *Ibid* at 12.
[104] Edited from *ibid* at 13.
[105] *Ibid* at 44.

Statement arguably identifies climate change as a material risk, thus effectively ending the materiality debate if regulated firms adopt this interpretation."[106]

The UK is also developing a green taxonomy under the auspices of the Bank of England, FCA, and HM Treasury, what it calls Technical Screening Criteria, to define what economic activities are environmentally sustainable, to be finalized by end of 2022.[107]

In early 2022, the PRA plans to review the quality of firms' 2021 disclosures to see what additional mandatory requirements may be necessary.[108] The Bank of England itself is reporting to TCFD standards, setting out how the bank considers climate-related risks across its governance, strategy, risk management, and the metrics the bank uses to monitor and manage those risks.[109]

iv. A note on forward-looking financial information

The Disclosures Chapter of the PRA/FCA Climate Financial Risk Forum Guide discusses the importance of moving toward forward-looking climate-related financial disclosure of assessments of risks and their impact, relevant for both PRA and FCA regulated entities.[110] It states that:

> given the urgency of the climate emergency, incomplete or missing data should not become a reason for inaction. Some disclosures are better than none. Financial institutions should, however, make clear in their disclosures their methodologies and assumptions, alongside any limitations and potential inaccuracies of the input data and the indicative nature of any forward-looking analysis. By describing these uncertainties, reporting entities can seek to limit their liability exposure for the risks associated with these uncertainties. Commitments should be made by regulators not to penalise financial institutions for limitations on input data, especially where reasonable efforts have been made to ensure the data are as complete and robust as possible.[111]

A proportionate liability regime, especially in the context of forward-looking statements, has been recognised by UK policymakers. The statutory liability regime under the UK Schedule 10A *Financial Services Market Act* for regulated information, including annual reports and accounts, excludes liability of issuers or directors to any person except in cases of fraudulent

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[106] *Ibid,* citing PRA, SS3/19, note 74. It also discusses materiality in Annex 1 of the Disclosures Chapter, *ibid.*
[107] PRA SS3/19, note 74 at 8.
[108] UK TCFD Taskforce, note 46 at 23.
[109] Bank of England, 'The Bank of England's climate-related financial disclosure', (June 2020), The Bank of England's climate-related financial disclosure 2020.
[110] Disclosures Chapter, note 44 at 21, with the details of how to do forward-looking disclosure set out in the risk management and scenario analysis guidance.
[111] *Ibid* at 42.

or reckless omissions or misstatements by directors.[112] The Disclosures Chapter makes recommendations as to how issuers can limit their liability risks for forward-looking climate-related disclosure:

> Qualifications to disclosure to limit liability risk
>
> Given the uncertainties inherent in anticipating policy and market responses to climate change, reporting entities are likely to wish to describe the assumptions on which their reporting is based and to qualify their disclosures by articulating factors such as:
>
> - the pace and nature of change in climate and energy policy and regulation;
> - developments in climate change science;
> - the pace and direction of technological development;
> - the rate of investor, public and government acceptance of the energy transition and related investment needs;
> - the emergent nature of the data sets by which climate impacts can be measured and the regional differences in available data and data quality; and
> - the predictive limitations of scenario analysis.
>
> These qualifications are appropriate because financial entities are being asked not only to describe risks but also to provide relevant metrics to quantify them in respect of the operations of their customers. They will also need to anticipate policy actions across the world to the extent these may impact on their interests. While descriptions of the governance around climate-related financial risk will relate to current and existing practices, much of the other information required is forward-looking and speculative. It requires businesses to look beyond the usual timescales of business planning and financial forecasting and inevitably involves increased levels of uncertainty. In this context, it is reasonable to be clear as to the limitations of the disclosure that can be provided.[113]

Assumptions for forward-looking modelling should therefore reflect geographic differences to account for different levels of exposures to climate-change risks.[114] The Climate Financial Risk Forum Guide 2020 notes that a range of tools used for forward-looking assessment of risks and opportunities can assist with risk management and decision-making in the face of complex climate risks, and scenario analysis is typically the most useful tool to deepen understanding of the potential impacts.[115] It notes, in line with the TCFD, that a scenario is not a prediction, "although it should be plausible whilst challenging business-as-usual

[112] *Ibid* at 52, citing Schedule 10A, *Financial Services Market Act,* which applies where the market is situated or operating in the UK, or the UK is the issuer's home State.
[113] *Ibid* at 53.
[114] Climate Financial Risk Forum Guide 2020, Risk Management Chapter, note 44 at 44.
[115] Climate Financial Risk Forum Guide 2020, Scenario Analysis Chapter, note 44 at 11.

assumptions".[116] Climate scenario analysis can help firms explore the potential range of climate-related outcomes in a structured manner, as well as how the business may respond in these circumstances.[117] The Guide's Scenario Analysis Chapter suggests a forward-looking assessment over an extended time horizon, while also evaluating the likelihood that extreme climate-related events will become more frequent and severe.[118]

v. Insights for Canadian and other regulators

The discussion above highlights some key considerations for Canadian regulators. Important has been the PRA's clear communication of its policy rationale for moving to mandatory disclosure, linking its measures to the safety and soundness of the financial system, the protection of deposit-holders, policyholders, and investors, and the need for a sustainable economic recovery. It has clearly set out its regulatory expectations, in particular, linking disclosure to the roles and responsibilities of the board of directors. Canadian and other regulators should follow suit, specifying that they require evidence that the board and its relevant sub-committees are exercising effective oversight of risk management and controls and ensuring that adequate resources and sufficient skills and expertise are devoted to managing the financial risks from climate change. This link between effective oversight, governance, and disclosure is critically important.

Another insight is the UK approach recommending that firms start with 'simple' disclosures and add complexity over time, increasing amounts of quantitative information added to complement qualitative disclosures. Metrics and targets should aim to be comparable over time to enable users of disclosures to understand the firm's general direction. Key is that organisations describe in detail the methodology underpinning metrics and targets so that users can assess consistency and comparability of their targets and metrics and understand strengths and weaknesses. The UK Government has stressed the importance of considering longer-term as well as short-term timeframes, and the need to explain the uncertainty in information being disclosed. Another insight is ensuring that any disclosure requirements stress the importance of comparability over time (year-on-year), against benchmarks, industry/sector standards or averages, and against targets. Finally, of note is the statement that now that the PRA has identified climate change as a material risk, it ends the materiality debate and focuses attention on the assessment, disclosure, and management of the risks.

The next part turns to policy and regulatory developments of the FCA. As in Canada, the UK Government acknowledges that there is some overlap between regulatory oversight categories; for example, some banks and insurance companies are also listed companies and may fall within the scope of regulations promulgated by the PRA and FCA or both.[119]

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[116] *Ibid.*
[117] *Ibid.*
[118] *Ibid* at 19.
[119] UK TCFD Roadmap, note 22 at 6.

2. Financial Conduct Authority

As noted above, the FCA is working closely with the PRA and other UK financial services regulators. As of May 2021, it is not as far along the mandatory TCFD implementation path as the PRA, but has undertaken a number of important regulatory initiatives in securities law. Of note is that the on-shoring of European Union regulation was completed 31 December 2020 post-Brexit. 'On-shoring' was the process of amending EU legislation and regulatory requirements so that they work in a UK-only context, including regulations and decisions that now form part of UK law by virtue of the UK *European Union (Withdrawal) Act 2018*.[120] For example, all issuers that have securities admitted to trading on UK-regulated markets must now submit information to the FCA and disclose certain information to the market.[121]

In December 2020, the FCA published a final rule for UK premium listed companies titled (Policy Statement) 'PS20/17, Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations' (PS20/17).[122] Premium listed companies must disclose compliance with the TCFD-aligned recommendations on a comply-or-explain basis.[123] PS20/17 implements a new listing rule and guidance that requires commercial companies with a UK premium listing to include a compliance statement in their annual financial report, stating whether they have made disclosures consistent with the recommendations of the TCFD or providing an explanation if they have not done so.[124] This rule applies for accounting periods beginning on or after 1 January 2021, and the first annual financial reports subject to this rule will be published in spring 2022.[125]

Companies need to assess if their approach to managing climate-related risks is consistent with the TCFD and, if not, develop a programme for achieving compliance, including having to adjust or establish board-level governance and risk management structures and processes for effectively managing and disclosing climate-related risks to TCFD standards.[126]

PS20/17 offers guidance to clarify the level of expected alignment of disclosures with TCFD guidance materials, as well as the limited circumstances in which issuers would be expected

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[120] FCA, 'Onshoring and the Temporary Transitional Power', (31 December 2020), Onshoring and the Temporary Transitional Power | FCA. A discussion of all the transition regulations is beyond the scope of this memorandum, but a good summary can be found at FCA, 'Key requirements of firms', (31 December 2020), Key requirements of firms | FCA.

[121] FCA, 'Issuers', (31 December 2020), Key requirements of firms | FCA. See also, FCA 2019/55 Technical Standards (Transparency Directive)(EU Exit) Instrument 2019, Microsoft Word - FCA 2019 55 and FCA, 'PS19/5 and feedback on our Brexit consultations', (2019), PS19/5 and feedback on our Brexit consultations | FCA.

[122] FCA, 'PS20/17, Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations', (21 December 2020), PS20/17: Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations | FCA (hereafter FCA, PS20/17).

[123] *Ibid.*

[124] *Ibid.*

[125] *Ibid.* See also FCA, 'Climate-related reporting requirements', (23 April 2021), Climate-related reporting requirements | FCA and FCA, 'Climate change and sustainable finance', (April 2021), Climate change and sustainable finance | FCA.

[126] FCA, PS20/17, *ibid.*

to explain, rather than disclose.[127] Companies will be required to carry out assessments on whether their disclosure is sufficiently detailed to allow users to assess their exposure and approach to climate-related issues. This requirement needs to take into account the level of exposure to climate-related risks and opportunities, and scope and objectives of their climate-related strategy. The FCA has made it clear that it expects companies to be able to make TCFD-aligned disclosures except where they face transitional challenges on obtaining the relevant data or embedding relevant modelling or analytical capabilities.[128]

Subject to consultation, cost-benefit analysis, and other statutory requirements, the FCA is aiming to finalize rules for UK-authorized asset managers, life insurers and FCA-regulated pension providers by the end of 2021, with these rules coming into force in 2022.[129] It will publish a consultation paper on climate-related disclosure by these entities, aligned with the recommendations of the TCFD, expected in June 2021, with final rules to be published by December 2021.[130]

By 2022, the disclosure will extend to 100% of listed commercial companies, including all premium listed commercial companies and all issuers of standard listed shares (excluding listed funds) on the FCA's Official List.[131] By 2022, mandatory disclosure will apply to 94% of all UK PRA-regulated banks, building societies, PRA-designated investment firms, and their groups and 89% of all UK PRA-regulated insurance and reinsurance firms and groups.[132] By 2023, mandatory disclosure will apply to 96% of UK-authorised asset managers.[133] For life insurers and FCA-regulated pension scheme providers, 89% will be subject to mandatory disclosure by 2022 and 98% will be subject to mandatory disclosure by 2023.[134] In addition, 72% of occupational pension schemes regulated by the DWP will be required to disclose by 2022, moving to 85% by 2025.[135] In 2024 and 2025, the Government plans to look at additional pension schemes and to make other refinements based on evolving knowledge.[136]

i. Existing FCA disclosure requirements under listing rules

The FCA requires firms to disclose financially material ESG-related matters, including climate-related matters.[137] Firms required to make this disclosure include listed issuers; other issuers with securities admitted to trading on regulated markets; and entities subject to the UK on-shored Market Abuse Regulation and the Prospectus Regulation.[138]

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[127] *Ibid.*
[128] *Ibid* at 23.
[129] UK TCFD Taskforce, note 46 at 26.
[130] *Ibid* at 7.
[131] UK TCFD Roadmap, note 22 at 6.
[132] *Ibid* at 7.
[133] *Ibid.*
[134] *Ibid* at 8.
[135] *Ibid* at 8.
[136] *Ibid* at 5.
[137] FCA, 'Primary Market Technical Note Disclosures in relation to ESG matters, including climate change', FCA Primary Markets / TN / 801.1, (December 2020), Primary Market Technical Note 801.1: Disclosures in relation to ESG matters, including climate change (fca.org.uk).
[138] *Ibid.* The EU Market Abuse Regulation (EU MAR) came into effect on 3 July 2016 and was on-shored into UK law on 31 December 2020 by the *European Union (Withdrawal) Act 2018*; Changes to EU Market

The FCA has reminded listed issuers that existing rules may already require disclosures in respect of climate change and other environmental, social and governance (ESG) matters by publishing a new Technical Note entitled ‘Disclosures in relation to ESG matters, including climate change’, which has applied to issuers since 21 December 2020.[139]

Each company covered by the rules must include a statement in its annual financial report setting out whether

- it has made disclosures consistent with the TCFD’s recommendations and recommended disclosures in its annual financial report;
- where it has included some, or all, of its disclosures in a document other than its annual financial report, an explanation of why and a reference to where the disclosures can be found;
- where it has not made disclosures, an explanation of why, and a description of any steps the company is taking or plans to take to be able to make consistent disclosures in the future – including relevant timeframes.[140]

The FCA reports that “issuers should consider ESG matters carefully when determining what should be disclosed under the Prospectus Regulation, Market Abuse Regulation, and other aspects of our disclosure regime.”[141] The December 2020 FCA Technical Note specifies requirements pursuant to a number of the listing rules (LR):

> LR 9.8.6R (8) and LR 9.8.7R require UK incorporated and overseas commercial companies with a premium listing to include in their annual financial report “a statement setting out:
>
> (a) whether the listed company has included in its annual financial report climate-related financial disclosures consistent with the TCFD Recommendations and Recommended Disclosures;
>
> (b) in cases where the listed company has:
>
> (i) made climate-related financial disclosures consistent with the TCFD Recommendations and Recommended Disclosures, but has included some or all of these disclosures in a document other than the annual financial report:

Abuse Regulation were made by the Market Abuse Exit Regulations 2019, to make sure that the on-shored legislation, the UK Market Abuse Regulation, operates effectively in the UK. The EU implementing measures for EU Market Abuse Regulation were also on-shored into UK law on 31 December 2020 by the EU (Withdrawal) Act 2018 and were amended by FCA 2019/45: FCA, Market Abuse Regulation, (6 January 2021), Market Abuse Regulation | FCA.

[139] FCA, Finalised Technical Note, Disclosures in relation to ESG matters, including climate change; and FCA, PS20/17, note 122.

[140] FCA, Finalised Technical Note, *ibid.*

[141] FCA, PS20/17, note 122.

(A) the recommendations and/or recommended disclosures for which it has included disclosures in that other document;
(B) a description of that document and where it can be found; and
(C) the reasons for including the relevant disclosures in that document and not in the annual financial report;

(ii) not included climate-related financial disclosures consistent with all of the TCFD Recommendations and Recommended Disclosures in either its annual financial report or other document as referred to in (i):
(A) the recommendations and/or recommended disclosures for which it has not included such disclosures;
(B) the reasons for not including such disclosures; and
(C) any steps it is taking or plans to take in order to be able to make those disclosures in the future, and the timeframe within which it expects to be able to make those disclosures; and

(c) where in its annual financial report or (where appropriate) other document the climate-related financial disclosures referred to in (a) can be found.[142]

Listing Rules LR 9.8.6BG, LR 9.8.6CG, and LR 9.8.6DG provide guidance in relation to determining whether climate-related financial disclosures are consistent with the TCFD recommendations and recommended disclosures.[143] LR 9.8.6EG states that the FCA would ordinarily expect a listed company to be able to "make climate-related financial disclosures consistent with the TCFD Recommendations and Recommended Disclosures, except where it faces transitional challenges in obtaining relevant data or embedding relevant modelling or analytical capabilities."[144]

LR 13.3.1R (1) requires every circular sent by a premium listed company to holders of its listed securities to "provide a clear and adequate explanation of its subject matter giving due prominence to its essential characteristics, benefits and risks". In addition, LR 13.3.1R (3) requires every such circular to "contain all information necessary to allow the security holders to make a properly informed decision" if voting or other action is required.[145] The FCA makes clear that these listing rules require disclosure in relation to ESG matters, including climate matters.[146]

[142] *Ibid* at 3-4.
[143] *Ibid.*
[144] *Ibid.*
[145] *Ibid*.
[146] *Ibid.*

ii. *Prospectus disclosure*

The December 2020 Technical Note clarifies existing climate and ESG-related disclosure obligations for a wider scope of issuers. For example, under the Listing Rules and Disclosure and Transparency Rules, the Technical Note clarifies that the type of ESG-related information that companies may need to provide under the Prospectus Regulation depends on the nature of the issuer and the type of securities.[147]

The FCA has specified that pursuant to Article 6 of the Prospectus Regulation, when a prospectus is required, it must contain the necessary information that is material to an investor for making an informed assessment of the assets and prospects of the issuer and of the reasons for the issuance and its impact on the issuer.[148] It specifies that in order to provide adequate information to the market for this purpose, information on climate change and other ESG-related matters needs to be provided where relevant to the issuer.[149] It gives the example of the UK Government's target to achieve net-zero carbon emissions by 2050 and to achieve the goals of the Paris Agreement more generally, and states that many companies likely need to consider significant changes to their business to meet emissions reduction targets, which may be material to an investor's assessment of the prospects of the company and its risks and opportunities.[150]

Recital 54 of the Prospectus Regulation addresses risk factors that are required to be disclosed and makes specific reference to ESG factors. The recital states:

> The primary purpose of including risk factors in a prospectus is to ensure that investors make an informed assessment of such risks and thus take investment decisions in full knowledge of the facts. Risk factors should therefore be limited to those risks which are material and specific to the issuer and its securities and which are corroborated by the content of the prospectus. A prospectus should not contain risk factors which are generic and only serve as disclaimers, as those could obscure more specific risk factors that investors should be aware of, thereby preventing the prospectus from presenting information in an easily analysable, concise and comprehensible form. Among others, environmental, social and governance circumstances can also constitute specific and material risks for the issuer and its securities and, in that case, should be disclosed. To help investors identify the most material risks, the issuer should adequately describe and present each risk factor in the prospectus. A limited number of risk factors selected by the issuer should be included in the summary.[151]

The FCA also points to the risk factors under the UK Prospectus Regulation, Guideline 7, on the presentation of risk factors across categories, noting that ESG-related risks could form a

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[147] *Ibid*.
[148] *Ibid* at 4.
[149] *Ibid*.
[150] *Ibid.*
[151] *Ibid* at 4.

specific category, but that climate change and other ESG factors might also be relevant to other suggested categories of risks such as 'legal and regulatory' risks.[152]

iii. Continuous disclosure and climate risks

The FCA reports that the same considerations should apply to issuers' disclosure pursuant to the continuous disclosure regime.[153] The Disclosure Guidance and Transparency Rules (DTR) require that the Management Report in the Annual Financial Report and the Interim Management Report in the Half-Yearly Financial Report contain a description of the principal risks and uncertainties facing the issuer (DTR 4.1.8R and DTR 4.2.7R, respectively).[154] The Management Report in the Annual Financial Report must also contain a fair review of the issuer's business.[155] DTR 4.1.9R requires the inclusion, in that review, to the extent necessary for an understanding of the development, performance or position of the issuer's business, of analysis using key performance indicators, including information relating to environmental matters where appropriate.[156]

DTR 7.2 requires an issuer to include a corporate governance statement in its directors' report, or in a separate report published with its annual report or made available on its website, including: information in relation to any relevant corporate governance code (DTR 7.2.2R and DTR 7.2.3R); and the issuer's internal control and risk management systems in relation to the financial reporting process (DTR 7.2.5R).[157] DTR 1A.3.2R requires an issuer to "take all reasonable care to ensure that any information it notifies to a regulatory information service (RIS) is not misleading, false or deceptive and does not omit anything likely to affect the import of the information", including in relation to climate and other ESG matters.[158]

In terms of disclosure of insider information, the on-shored UK Market Abuse Regulation, Article 17, requires an issuer to publicly disclose inside information that directly concerns insiders as soon as possible, unless the conditions for delay are met, which the FCA states includes any inside information that relates to climate change and other ESG-related matters.[159] Article 17(1) states that "The issuer shall ensure that the inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public…". The FCA has cautioned that when disclosing climate-related and other ESG-related information, an issuer must not do so in a way that breaches the prohibition of market manipulation under Article 15 of the Market Abuse Regulation, including the wilful omission of material facts, as well as the knowingly inaccurate reporting of information.[160]

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[152] *Ibid* at 5.
[153] *Ibid* at 6.
[154] FCA, 'Disclosure Guidance and Transparency Rules Sourcebook', (May 2021), DTR.pdf (fca.org.uk).
[155] *Ibid.*
[156] *Ibid.*
[157] *Ibid.*
[158] *Ibid* at 7. See also DTR 1A.3 FCA may require the publication of information - FCA Handbook.
[159] UK on-shored Market Abuse Regulation, note 138.
[160] FCA, 'Disclosure Guidance and Transparency Rules sourcebook', at 7, https://www.handbook.fca.org.uk/handbook/DTR.pdf.

iv. Mandatory TCFD-aligned disclosure

The FCA intends to extend similar regulatory TCFD requirements to UK standard listed issuers of shares and asset managers, among others, and is expected to consult in these areas in 2021. To date, the new Listing Rules apply only to UK and non-UK premium listed commercial companies, including sovereign-controlled commercial companies; and the Government has announced that it will move from the comply-or-explain approach of these issuers to 'comply' in the future.

In 2022, mandatory disclosure will extend to UK-registered companies, a wider scope of listed companies, the largest UK-authorised asset managers, life insurers and FCA-regulated pension providers, and occupational pension schemes with greater than £1 billion AUM.[161] Thus, 100% of all premium listed commercial companies, and all issuers of standard listed shares (excluding listed funds) on the FCA's Official List will have mandatory disclosure by 2022.[162] The disclosure requirements will apply to 75% of UK-authorised asset managers, defined as

(i) MiFID investment firms who provide portfolio management services;[163]
(ii) alternative investment fund managers (AIFM), including small authorised AIFM that have managing permissions;
(iii) UCITS management companies;[164] and UCITS funds without an external management company.[165]

[161] UK TCFD Roadmap, note 22 at 5.
[162] *Ibid* at 6, figure 2, citing FCA Official List, London Stock Exchange; UK Taskforce calculations.
[163] MiFID refers to the Markets in Financial Instruments Directive; FCA, FCA Handbook, MiFID investment firm - FCA Handbook A MiFID investment firm for purposes of UK legislation is "(1) (in summary) a firm to which MiFID would apply if it had its head office or registered office in the EEA including, for some purposes only, a credit institution and collective portfolio management investment firm. (2) (in full) a firm which is: (a) an investment firm with its head office in the UK (or, if it has a registered office, that office); (b) a CRD credit institution (only when providing an investment service or activity or when selling, or advising clients in relation to, structured deposits for the purposes of: (i) the rules corresponding to the articles referred to in article 1(3) and article 1(4) of MiFID; (ii) the requirements imposed upon it by and under MiFIR; and (iii) the requirements imposed upon it by on-shored regulations which were previously EU regulations made under MiFID); or (ba) a CRD credit institution (only when providing an investment service or activity) in relation to COMP or FEES 6); (c) a collective portfolio management investment firm (only when providing the services referred to in article 6(4) AIFMD or article 6(3) of the UCITS Directive in relation to the rules which implemented the articles of MiFID referred to in article 6(6) of AIFMD or article 6(4) of the UCITS Directive and for a full-scope UK AIFM where relevant, the rules which implemented article 12(2)(b) of AIFMD); unless, and to the extent that, it is a person to which Part 1 of Schedule 3 to the Regulated Activities Order or regulation 8 of the MiFI Regulations applies."
[164] FCA, FCA Handbook, A UCITS management company is "a firm which is either (a) a UCITS firm; or (b) a UCITS investment firm. (2) (in relation to MiFID business) a management company", such a firm being a management company, whether or not it is the manager of an alternative investment fund or an operator of collective investment schemes. Glossary Terms - FCA Handbook.
[165] UK TCFD Roadmap, note 22 at 7.

The required disclosures are to be directed towards clients and end-investors, rather than shareholders.[166]

The FCA is also proposing further measures for asset managers, life insurers, and FCA-regulated pension schemes.[167] The FCA will publish a consultation paper in June 2021 on proposals to extend the scope of issuers covered by its TCFD-aligned disclosure rule, with the expectation that the final rules will be published in the fourth quarter of 2021.[168] The FCA is also developing "guiding principles for the design, delivery and disclosure of ESG/sustainable fund products to help ensure firms are clear about, and understand, their existing obligations, including their responsibility to provide information to consumers that is fair, clear, and not misleading" to support consumer access to genuinely sustainable investment products that meet their needs and preferences.[169] The FCA recently hired Sacha Sadan as Director of Environment Social and Governance to develop the FCA's approach to sustainable finance domestically and internationally, and to "lead the development of policy that will help ensure the long-term safety and soundness of firms, the proper functioning of markets and the protection of consumers".[170] The appointment was made after a mandate letter from HM Treasury to the FCA in March 2021, which stated:

> The government wishes to deliver a financial system which supports and enables a net-zero economy by mobilising private finance towards sustainable and resilient growth and is resilient to the physical and transition risks that climate change presents. The FCA should have regard to the government's commitment to achieve a net-zero economy by 2050 under the *Climate Change Act 2008* (Order 2019) when considering how to advance its objectives and discharge its functions.[171]

In summary, the UK TCFD Roadmap sets out a series of actions to be taken by regulators and government departments over the next five years, with most of these actions expected to come into force by 2023, subject to the outcomes of relevant regulators' and government departments' consultation processes and other statutory requirements.[172]

v. Insights for Canadian and other regulators

Canadian securities regulators have previously issued two staff notices discussing how climate change has become a mainstream business risk that must be disclosed.[173] However,

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166 *Ibid* at 7.
167 *Ibid* at 4.
168 Regulatory Initiatives Grid May 2021, note 45 at 7.
169 *Ibid* at 7. In May 2021, it will publish a report on how ESG/sustainable claims affect consumer choices.
170 FCA, 'FCA makes key sustainability and technology hires', FCA Press Release, (19 April 2021), FCA makes key sustainability and technology hires | FCA.
171 HM Treasury Chancellor of the Exchequer, 'Recommendations for the Financial Conduct Authority', (23 March 2021), CX_Letter_-_FCA_Remit_230321.pdf (publishing.service.gov.uk).
172 UK TCFD Roadmap, note 22 at 4.
173 Canadian Securities Administrators (CSA) Staff Notice 51-358 Reporting of Climate Change-related Risks, (1 August 2019), https://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20190801_51-358_reporting-of-climate-changerelated-risks.htm (hereafter CSA, Staff Notice 51-358); and CSA Staff Notice 51-354

they have yet to give further guidance on the nature and extent of the disclosures required. The Canadian Securities Administrators (CSA) biennial report on its continuous disclosure review program, published most recently in 2020, reports results of reviews conducted by the CSA within the scope of its Continuous Disclosure Review Program.[174] The review does not mention 'climate' or 'environmental', which likely means there was no scanning of disclosure deficiencies for climate-related risk disclosure. There does not yet appear to be any enforcement of failure to disclose material climate risks. Securities regulators can learn from the UK regulatory initiatives in adopting TCFD-aligned disclosure over specified timeframes.

The CSA is currently conducting a consultation on proposed changes to the continuous disclosure requirements for non-investment fund reporting issuers that will streamline and clarify their annual and interim filings.[175] One question posed is whether to combine the management discussion and analysis (MD&A) and the annual information form (AIF) with the financial statements into one reporting document called the annual disclosure statement for annual reporting purposes, and the interim disclosure statement for interim reporting purposes.[176] The CSA notes that the combination of documents will reduce burden by fostering streamlined reporting and increasing reporting efficiency for reporting issuers, in turn improving usability for investors and analysts.[177] It is an opportune time to consider directly embedding climate disclosure in the financial reporting.

The CSA consultation suggests removing a number of materiality qualifiers and have all disclosure requirements subject to the qualification that issuers are to focus on material information, only retaining qualifiers where the materiality qualifier is part of a defined term such as significant acquisition or in prospectus rules. It proposes under section 15, 'describe the business' that

> (2) Your company's business description must include a discussion of the following for your company as a whole:
>
> . . .
>
> description of
>
> (i) the effects of environmental protection legislation on your company's operations, capital expenditures, financial

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Report on Climate change-related Disclosure Project (5 April 2018), CSA Staff Notice 51-354 Report on Climate change-related Disclosure Project | OSC (hereafter CSA, Staff Notice 51-354).

[174] CSA Multilateral Staff Notice 51-361 Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2020 and March 31, 2019, (29 October 2020), CSA Multilateral Staff Notice 51-361 Continuous Disclosure Review Program Activities for the fiscal years (osc.ca).

[175] Canadian Securities Administrators, CSA Notice and Request for Comment Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* and Other Amendments and Changes Relating to Annual and Interim Filings of Non-Investment Fund Reporting Issuers and Seeking Feedback on a Proposed Framework for Semi-Annual Reporting – Venture Issuers on a Voluntary Basis is available on CSA, (20 May 2021), Proposed Amendments to National Instrument 51-102 Continuous Disclosure Obligations and Other Amendments and Changes Relating to Annual and Interim Filings of Non-Investment Fund Reporting Issuers and Seeking Feedback on a Proposed Framework | OSC.

[176] *Ibid.*

[177] *Ibid.*

performance or competitive position for your company's most recently completed financial year and the expected effect in future years, and
(ii) any social or environmental policies implemented by your company, such as policies regarding your company's relationship with the environment or with the communities in which it does business, or human rights policies, and the steps your company has taken to implement them.[178]

The CSA also proposes disclosure under section 16, risk factors:

> Disclose risk factors relating to your company and its business, such as cash flow and liquidity problems, if any, experience of management, the general risks inherent in the business carried on by your company, environmental and health risks, reliance on personnel, regulatory constraints, economic or political conditions and financial history and any other matter that would be most likely to influence an investor's decision to purchase securities of your company. If there is a risk that securityholders of your company may become liable to make an additional contribution beyond the price of the security, disclose that risk.

While the streamlined approach highlights environmental risks and policies the company may have in respect of the environment, there is no mention more specifically of climate change or its related risks. Given the importance and urgency of climate-related financial risks, it should be directly embedded in continuous disclosure. Regulators could follow the UK guidance in respect of declaring climate change a material risk and then shifting focus to more precise assessment of the scope and nature of the risks that need to be managed.

Even if the CSA cannot agree to fully mandatory TCFD-aligned disclosure, Canadian regulators can gain insights from the FCA's shift to a comply-or-explain initial step, setting a fairly high bar for failing to comply. The FCA has made it clear that it expects companies to be able to make TCFD-aligned disclosures except where they face transitional challenges on obtaining the relevant data or embedding relevant modelling or analytical capabilities. The FCA is also requiring, where the regulated firm has not made disclosures, an explanation of why, and a description of any steps the company is taking or plans to take to be able to make consistent disclosures in the future, including its timelines. At the very least, climate-related financial risks should be disclosed under the effective governance framework of risk management, strategy, governance, and targets and metrics. The UK regulatory framework offers guidance for Canadian and other regulators.

3. Aligning TCFD Disclosure for Private Companies with Requirements for Listed Companies and Financial Institutions

[178] Section 15(2), *ibid.*

Building on these regulatory actions by prudential and securities regulators, the UK Department for Business, Energy and Industrial Strategy (BEIS) is planning measures for UK-registered companies. From March to May 2021, BEIS completed a consultation seeking views on proposals to mandate climate-related financial disclosures by publicly-quoted companies,[179] large private companies, and limited liability partnerships (LLP), as the next step in the Government's Green Finance Strategy.[180]

The Government proposes to use the TCFD's four pillar framework of governance, strategy, risk management, and metrics and targets as the basis of its disclosure requirements under UK company law, with adjustments made where necessary to make requirements coherent with the UK *Companies Act 2006*.[181] The BEIS states that the proposals will contribute towards the UK becoming the first G20 country to make TCFD-aligned disclosures mandatory across the entire economy.[182] The proposals are aimed at ensuring market participants have better information to adequately understand climate-related financial risks and opportunities to support the transition to net zero, and "to help companies think about what they need to do to address climate change as an important risk and opportunity for their organisation, operations, and people."[183]

The BEIS consultation document sets out how it plans to legislate, through the *Companies Act 2006* and other relevant powers, for certain companies and LLP to disclose TCFD-aligned climate-related information.[184] It notes that:

> Financial markets only work if they are consistently supplied with timely, comparable and transparent information and data, something which regulatory action to require relevant disclosures can support. The proposals set out in this consultation paper aim to ensure that all UK companies and LLPs above certain thresholds give due consideration to climate change in risk assessment and decision making while providing a good level of disclosure to financial markets.

. . .

[179] BEIS Consultation on requiring mandatory climate-related financial disclosures, note 2. There are different definitions of publicly-quoted companies in UK law. Here, BEIS is referring to the *Companies Act 2006,* UK Public General Acts 2006 c 46, s 385 defines quoted company as: (1) For the purposes of this Part a company is a quoted company in relation to a financial year if it is a quoted company immediately before the end of the accounting reference period by reference to which that financial year was determined. (2) A 'quoted company' means a company whose equity share capital—(a) has been included in the official list in accordance with the provisions of Part 6 of the *Financial Services and Markets Act 2000* (c 8), or (b) is officially listed in an EEA State, or (c) is admitted to dealing on either the New York Stock Exchange or the exchange known as Nasdaq. In paragraph (a) 'the official list' has the meaning given by section 103(1) of the *Financial Services and Markets Act 2000.*"
[180] BEIS Consultation on requiring mandatory climate-related financial disclosures, note 2. The UK Department for Business, Energy & Industrial Strategy (BEIS) consultation took place from March to May 2021.
[181] *Ibid* at 7.
[182] *Ibid*.
[183] *Ibid* at 8.
[184] *Ibid* at 14.

> Our proposed rules are complementary to the FCA's, with the FCA requiring disclosures in line with the four pillars and 11 recommended disclosures of the TCFD. This represents a tiering between premium listed companies and those subject to proposed BEIS requirements. We will continue to work closely with the FCA and the Financial Reporting Council (FRC) to ensure that our respective requirements and monitoring and enforcement capabilities operate in a coherent and complementary way.[185]

The Government anticipates that 50% of UK-registered large private companies will be subject to the disclosure requirements in 2022.[186]

i. Companies Act disclosures

The UK *Companies Act 2006* currently requires the directors of a company to prepare a Strategic Report for each financial year of the company, unless the company has received a small company exemption.[187] The purpose of the Strategic Report is to inform shareholders (called members in the UK) of the company and help them assess how the directors have performed their duty under section 172 to promote the success of the company.[188] The Strategic Report must contain a fair review of the company's business, and a description of the principal risks and uncertainties facing the company.[189] The review must, to the extent necessary for an understanding of the development, performance, or position of the company's business, include analysis using financial key performance indicators, and where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters.[190]

In the case of a quoted company, the Strategic Report must, to the extent necessary for an understanding of the development, performance, or position of the company's business, include the main trends and factors likely to affect the future development, performance, and position of the company's business, and information about (i) environmental matters, including the impact of the company's business on the environment, (ii) the company's employees, and (iii) social, community and human rights issues, including information about any policies of the company in relation to those matters and the effectiveness of those policies.[191] The non-financial information statement must contain information, to the extent necessary for an understanding of the company's performance and position and the impact

[185] *Ibid* at 15.
[186] "The maximum potential coverage of UK-registered large private companies is calculated as the total turnover of private companies above the thresholds of a 'medium company' set by the Companies Act (and based on current figures). The bars represent the indicative percentage of large private companies that could be covered by disclosure requirements at each point in the timeline, subject to the outcome of future policy development, consultation, and other regulatory processes." UK TCFD Roadmap, note 22 at 6. See also UK TCFD Taskforce, note 46 at 23.
[187] UK *Companies Act 2006*, UK Public General Acts 2006 c 46, ss 414A and B.
[188] *Ibid,* s 414C.
[189] *Ibid,* s 414C(2).
[190] *Ibid,* s 414C(4).
[191] *Ibid,* s 414C(7). If the report does not contain information of each kind mentioned in paragraphs (b)(i), (ii) and (iii), it must state which of those kinds of information it does not contain.

of its activities, relating to environmental matters, employees, social matters, respect for human rights, and anti-corruption matters, including a brief description of the company's business model, the policies pursued by the company in relation to these matters, any due diligence processes implemented by the company in pursuance of those policies and outcome of those policies, key performance indicators, and a description of the principal risks relating to these matters and how they are managed.[192] Climate change is clearly included in environmental matters.

The UK Institute of Chartered Accountants in England and Wales has cautioned that the Strategic Report should contain information that is material and when the directors of a company consider climate change to be a principal risk or uncertainty facing the company, it should be disclosed in the Strategic Report.[193]

Quoted companies and public listed entities with over 500 employees are also subject to specific reporting requirements on environmental matters within the Strategic Report, for example, reporting details of policies pursued on environmental matters and the effectiveness of these policies. This information is required to the extent that it provides information that is necessary for an understanding of the development, performance, and position of the company's business.[194]

For reporting periods beginning on or after 1 January 2019, large companies are required to include a statement in the Strategic Report that describes how the directors have performed their duty under section 172 of the *Companies Act 2006*; a duty that requires directors to promote the success of the company for the benefit of its members, as a whole, and in doing so, to have regard to the impact of the company's operations on the community and the environment, among other matters. For reporting periods commencing on or after 1 April 2019, large companies, quoted companies, and large LLP are required to comply with streamlined carbon and energy reporting requirements.[195] For companies, the associated disclosures must be included in the directors' report; and for LLP, disclosures must be included in a new Carbon and Energy Report that will form part of the Annual Report.[196]

According to the BEIS consultation document, the UK *Companies Act* requirement for a Strategic Report of a company will introduce new reporting obligations in light of the risks and opportunities posed by climate change.[197] The proposed regulation covers all UK companies that are currently required to produce a non-financial information statement, being UK companies that have more than 500 employees and have transferable securities admitted to trading on a UK regulated market; banking companies or insurance companies that are 'public interest entities' (PIE).[198] It will also cover UK-registered companies with

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[192] *Ibid,* s 414CB.

[193] ICAEW, 'Reporting on climate change', (2021), Reporting on climate change | ICAEW.

[194] Climate Financial Risk Forum Guide, Disclosures Chapter, note 44 at 59.

[195] ICAEW, 'Reporting on climate change', note 193.

[196] *Ibid.*

[197] BEIS Consultation on requiring mandatory climate-related financial disclosures, note 2 at 24.

[198] "Section 414CA of the Act already requires entities which meet the current definition of Public Interest Entities (PIEs) and which have more than 500 employees to produce a non-financial information statement. We believe that using the existing scope of companies that are required to produce a non-financial statement and expanding the scope of companies captured under these proposals to include

securities admitted to AIM (London Stock Exchange's market for small and medium size growth companies) with more than 500 employees; UK-registered companies not included in the above categories but that have more than 500 employees and a turnover of more than £500 million; LLP with more than 500 employees and a turnover of more than £500 million.[199] It specifies:

> Companies will be required to report climate-related financial information in the non-financial information statement which forms part of the Strategic Report. LLPs will be required to report climate-related financial information in either the non-financial information statement which forms part of their Strategic Report or the Energy and Carbon Report which forms part of their Annual Report.
>
> Disclosure requirements on companies and LLPs: To require companies and LLPs to disclose climate-related financial information in line with the four overarching pillars of the TCFD recommendations on a mandatory basis (Governance, Strategy, Risk Management, Metrics & Targets).[200]

The changes will be implemented pursuant to the *Companies Act 2006* and the *Limited Liability Partnerships Act 2000*.[201] Regulations are to be made by the end of 2021, with regulations coming into force on the common commencement date of 6 April 2022, and to be applicable for accounting periods starting on or after that date.[202]

The BEIS consultation document makes clear that to support the UK's transition to net-zero GHG emissions, the UK Government considers it important to ensure that companies with a material economic or environmental impact or exposure assess, disclose, and ultimately take actions to manage climate-related risks and opportunities.[203] Of note is that the aim is to align and increase comparability of climate-related disclosures across companies, both privately held (of a specified size) and publicly listed.

Also of interest is that the BEIS does not intend to introduce any new enforcement mechanisms, as it considers existing mechanisms to be effective for enforcement of the new requirements. It observes:

> The *Companies Act* and the relevant LLP Regulations already contain general enforcement provisions which deal with a failure to prepare or file the relevant report. In addition, a director of a company or a

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relevant large companies that are not PIEs strikes an appropriate balance between not adding to the existing scope complexity, but also ensuring that relevant large companies are brought into scope", BEIS Consultation on requiring mandatory climate-related financial disclosures, note 2 at 21.

[199] BEIS Consultation on requiring mandatory climate-related financial disclosures, note 2 at 8, noting that the UK regulated market as defined in section 1173, UK *Companies Act* 2006. See also the *Limited Liability Partnerships Act* 2000.

[200] BEIS Consultation on requiring mandatory climate-related financial disclosures, *ibid* at 8.

[201] *Ibid* at 4.

[202] *Ibid* at 4, 8.

[203] *Ibid*.

> member of an LLP is liable to compensate the company or LLP for any loss suffered as a result of any untrue or misleading statement in the Strategic Report or the energy and carbon report. This only applies if the director or member knew that the statement to be untrue or misleading or was reckless whether it was untrue or misleading. Further, if it appears to the Secretary of State or the FRC that the reports do not comply with the requirements of the CA 2006, then the Secretary of State or the FRC may apply to the court for an order requiring the preparation of revised accounts and/or reports. The existing provisions will apply to the new duties in connection with climate-related financial disclosures because the new duties will form part of the Strategic Report or the energy and carbon report.[204]

The UK Financial Reporting Council (FRC) participated in the TCFD consultations in 2017.[205] In May 2021, the FRC is considering revision of the auditing standard that deals with fraud in order to clarify the auditor's responsibilities in planning, risk assessment, performance, and reporting.[206] The FRC has published a letter to CEO, CFO, and Audit Committee Chairs setting out the FRC's expectations on company reporting for 2020/21, in which it stated that some financial statements did not mention climate change, even though narrative reporting implied that it might be having a significant impact on key financial statement assumptions.[207] The FRC is encouraging companies to:

- Provide Strategic Reports that clearly describe their environmental policies, rather than simply naming or listing them.
- Give a balanced description of how climate policies and targets have been incorporated into business plans and their expected business impact, making appropriate use of key performance indicators, where relevant, and without disproportionate focus on 'good news' stories in parts of the business that are not material.
- Describe the impact of their businesses on the environment, including their supply chains.
- Provide required segmental and disaggregated revenue disclosures to enable users to understand the relative sizes of operations for which climate change presents substantially different risks and opportunities.
- Provide financial statements that, where relevant, explain the impact of climate related risks, policies and strategies on both measurement and disclosure including, in particular: impairment of individual assets as well as cash generating units; useful economic lives of assets; expected amounts and timing of cash outflows for provisions and other liabilities; fair values of assets and liabilities; and disclosure of key

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[204] *Ibid* at 28.
[205] UK Financial Reporting Council (FRC), 'FRC responses to the Task Force on Climate-related Financial Disclosures report consultation questions', FINANCIAL REPORTING COUNCIL (frc.org.uk).
[206] Regulatory Initiatives Grid May 2021, note 45 at 11. A new standard is expected to be issued May/June 2021, with an effective date for financial periods beginning on or after 15 December 2021.
[207] FRC, 'Dear CEOs, CFOs and Audit Committee Chairs Summary of key developments for 2020/21 annual reports', (12 November 2020), at 3, FRC_Year_End_Letter_Nov_2020_Final.pdf.

> accounting judgments, estimation uncertainties and related sensitivities.[208]

The FRC letter notes that in previous reporting many companies did not sufficiently explain how their directors discharged their duty under section 172 of the *Companies Act 2006,* in particular, the responsibility to have regard to the consequences of decisions in the long term and how stakeholder engagement affected decision making in respect of environmental and other issues.[209]

BEIS is also undertaking a consultation on restoring 'trust in audit', seeking views on proposals to strengthen the UK's framework for audit, reporting, and corporate governance of the largest companies.[210] It has observed:

> The proposals in that consultation document include extending the definition of Public Interest Entities, a proposal to introduce a mandatory resilience statement and it asks whether the resilience statement could be used as a vehicle for climate-related financial disclosures in the future. While timing of those reforms and implementation of the proposals set out in this document may differ, we think that the approach to climate-related financial disclosures should be consistent with that envisaged by the wider reform work.[211]

ii. Insights for Canadian and other regulators

While the UK provisions for TCFD-aligned disclosure for large private companies and limited liability partnerships are not as far along in development as for publicly traded companies, of note for Canadian regulators is that corporate law and partnership law will create duties in connection with climate-related financial disclosures because the new duties will form part of businesses' strategic report or the energy and carbon report. It illustrates the importance of recognizing the climate impacts of large companies, whether they are publicly listed or privately held. It creates incentives to ensure that climate-related financial risks and opportunities are discussed at the corporate board level and that the board, in turn, is exercising appropriate oversight over the executive team assigned responsibility for managing the risks and opportunities. Much can be achieved by ensuring clarity and certainty in respect of regulatory requirements in respect of climate-related disclosure.

Finally, the UK Government regulatory initiatives highlight the business reasons for mandatory disclosure across the economy and create fairness in the requirements between publicly listed and privately-held companies where there economic activities have an impact on the country's ability to transition to net-zero carbon emissions.

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[208] *Ibid* at 4.
[209] *Ibid* at 6.
[210] BEIS, 'Restoring Trust in Audit and Corporate Governance', https://www.gov.uk/government/news/business-secretary-launches-major-overhaul-of-uks-audit-regime-in-wake-of-big-name-company-collapses.
[211] BEIS, Consultation on requiring mandatory climate-related financial disclosures, note 2 at 16.

4. Department for Work and Pensions Initiatives on Climate Disclosure

The UK Parliament recently passed the Department for Work and Pensions (DWP) *Pension Schemes Act 2021,* which gives the DWP the authority to require occupational pension schemes to make climate-related disclosures.[212] The DWP issued a consultation document in August 2020, proposing a phased implementation of mandatory obligations, beginning with the largest pension schemes, from 2022. The DWP subsequently issued a further consultation in January 2021 with draft legislation and draft statutory guidance that would enact the government's policy proposals.[213] It then enacted the statute.

The *Pension Schemes Act 2021,* which received Royal Assent in February 2021, specifies that regulations may impose requirements on the trustees or managers of an occupational pension scheme of a prescribed description with a view to securing that there is effective governance of the scheme with respect to the effects of climate change, including governance of climate-related risks and opportunities.[214]

The UK Department for Work and Pensions has drafted regulations pursuant to the new pension legislation in a document titled 'Taking action on climate risk: improving governance and reporting by occupational pension schemes' and recently closed a consultation period.[215] Pursuant to the draft regulations, pension trustees must establish and maintain oversight of the climate-related risks and opportunities that are relevant to the pension scheme.[216] The draft regulations require trustees to take all such steps as are reasonable and proportionate in the particular circumstances, taking into account the costs incurred, or likely to be incurred, by the pension scheme and the time required to be spent by the trustees, or anyone acting on their behalf.[217]

Trustees must have an appropriate degree of knowledge and understanding of the principles relating to the identification, assessment, and management of climate-related risks and opportunities.[218] The regulations will set out factors that trustees must consider in setting time horizons and trustees must disclose their chosen time horizons.[219]

The draft regulations also specify that trustees must select a minimum of two emissions-based metrics, one of which must be an absolute measure of emissions and one that must be

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[212] *Pension Schemes Act 2021,* UK Public General Acts, 2021 c 1*,* ss 41A to 41C, which received Royal Assent on 11 February 2021, Pension Schemes Act 2021 (legislation.gov.uk).
[213] https://www.gov.uk/government/consultations/taking-action-on-climate-risk-improving-governance-and-reporting-by-occupational-pension-schemes-response-and-consultation-on-regulations.
[214] *Pension Schemes Act 2021,* note 212, s 41A.
[215] Department for Work and Pensions, Taking action on climate risk: improving governance and reporting by occupational pension schemes – response and consultation on regulations, (27 January 2021), consultation closed 10 March 2021, Taking action on climate risk: improving governance and reporting by occupational pension schemes (publishing.service.gov.uk).
[216] *Ibid* at 21, 86, 87.
[217] *Ibid* at 12. See paragraph 19 of the Schedule to the draft Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations.
[218] *Ibid* at 84.
[219] *Ibid.*

an intensity-based measure of emissions, as well as one additional climate-related metric.[220] Performance against targets is to be measured annually, and trustees must annually annual review targets to determine whether they should be maintained or replaced.[221] Trustees are to report in line with TCFD recommendations, and where they diverge from statutory guidance, they need to be able to explain their reasons for doing so.[222]

Trustees must establish and maintain oversight of the climate-related risks and opportunities that are relevant to the pension scheme. They must establish and maintain processes for the purpose of satisfying themselves that persons undertaking governance on their behalf are taking adequate steps to identify, assess and manage climate-related risks and opportunities that are relevant to the scheme.[223] The chair of the pension board must sign the TCFD report.[224] The draft regulations state that trustees must meet the climate change governance requirements for current scheme year from 1 October 2021 to end of that scheme year, and then report annually.[225]

Scenario analysis must be carried out in the first year in which the climate change governance requirements apply to the trustees of the pension scheme and then at least every three years thereafter.[226] In the intervening years, trustees must review whether or not circumstances are such that they should refresh their analysis, taking account of increased availability of data or a significant change in investment or funding strategy, and either carry out fresh scenario analysis or explain in their annual TCFD report why they have decided not to do so.[227] Underlying data for trustees' chosen metrics and targets must be obtained, the metrics calculated, and performance against targets measured, at least annually.[228]

Trustees must identify and assess the impact of climate-related risks and opportunities that they consider will have an effect over the short term, medium term, and long term on the scheme's investment strategy.[229] Trustees must, as far as they are able, undertake scenario analysis assessing the impact on the scheme's assets and liabilities, the resilience of the scheme's investment strategy and, where it has one, the scheme's funding strategy for at least two scenarios.[230] In their annual TCFD report, trustees must describe the most recent scenarios they have analysed, the potential impact on the scheme's assets and liabilities and the resilience of the scheme's investment strategy.[231] With respect to risk management, trustees must establish and maintain processes for the purpose of enabling them to identify, assess, and effectively manage climate-related risks that are relevant to the scheme.[232] In their annual TCFD report, trustees must describe these processes and how they are

[220] *Ibid*.
[221] *Ibid.*
[222] *Ibid* at 21.
[223] *Ibid* at 21.
[224] *Ibid* at 18.
[225] *Ibid* at 19.
[226] *Ibid* at 21, 82, 97.
[227] *Ibid* at 21.
[228] *Ibid.*
[229] *Ibid* at 22, 74.
[230] *Ibid* at 22.
[231] *Ibid.*
[232] *Ibid.*

integrated into the trustees' overall risk management of the scheme.[233] Trustees must select and as far as they are able calculate an absolute emissions metric and an emissions intensity metric in respect of the scheme's assets.[234] Draft statutory guidance proposes that trustees should use total emissions and carbon footprint metrics – calculating scope 1, 2 and 3 GHG emissions.[235]

Trustees must review their selection of metrics from time to time as appropriate to the scheme. In their annual TCFD report, trustees must describe the metrics they have calculated and if they have not been able to obtain data to calculate the metrics for all of the assets of the scheme, the reasons.[236] Trustees must set a non-binding target for the scheme in relation to at least one of the metrics that they have selected to calculate; and on an annual basis they must measure performance against the target, and taking into account the scheme's performance, they must decide whether to retain or replace the target.[237] In their annual TCFD report, trustees must describe the targets set and the performance of the scheme against them.[238]

The trustees will be required to publish their TCFD report in full on a publicly available website where the report is accessible free of charge and they must notify all members to whom they must send the annual benefit statement of the website address where they can locate the full TCFD report.[239] The draft regulations will be revised after further consultation and implemented in 2021.

There is also a current consultation on consideration of social risks and opportunities by occupational pension schemes.[240] The Ministry of Housing, Communities, and Local Government also intends to consult in 2021 on implementation in the Local Government Pension Scheme by 2023.[241]

IV. Financial Institution, Investor, and Professional Reactions to the UK Mandatory TCFD-aligned Measures

Key to winning the support of the UK private sector has been the clear signalling by the UK Government that the "UK is open for low-carbon investment", encouraging private investment needed to support the UK's economic recovery from the COVID-19 health crisis.[242] The Government's regulatory actions are aimed at the UK securing competitive positions in growing global markets for low-carbon goods and services, the Government

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233 *Ibid.*
234 *Ibid.*
235 *Ibid.*
236 *Ibid* at 23.
237 *Ibid* at 84, 101.
238 *Ibid* at 99.
239 *Ibid* at 103.
240 Department for Work and Pensions, Consideration of social risks and opportunities by occupational pension schemes, (24 March 2021), Consideration of social risks and opportunities by occupational pension schemes (publishing.service.gov.uk).
241 UK TCFD Roadmap, note 22 at 4.
242 Sixth Carbon Budget, note 4 at 13.

announcing that low-carbon markets and supply chains must scale up so that almost all new purchases and investments are in zero-carbon solutions by 2030 or soon after and investments should be made resilient to the expected impacts of climate change.[243]

Institutional investors and major asset managers have endorsed the TCFD framework and are themselves beginning to disclose under TCFD recommendations.[244] Financial institutions have publicly supported the UK TCFD-aligned policy initiatives.[245] Insurance companies have been supportive of TCFD disclosure, and many have commenced TCFD-aligned disclosure.[246] For example, British multinational financial services and asset management company Legal & General Group Plc now reports to TCFD and has stated that it believes TCFD reporting should be mandatory for all significant companies.[247] BlackRock supported the announcement by the UK Government to introduce mandatory TCFD reporting by 2025 and participates in its Climate Financial Risk Forum.[248] It also made a submission to the UK Department for Work and Pensions regarding proposed mandatory TCFD Reporting for large occupational pension schemes.[249] The London Stock Exchange Group was supportive of the TCFD proposals, recommending a comply-or-explain approach.[250]

Climate Action 100+, an investor led initiative to ensure the world's largest corporate GHG emitters take necessary action on climate change, has focused on the UK as part of its campaign.[251] This activity is illustrated by the 2019 shareholder resolution at BP by 58 investors with £10 billion holdings (~10%) of the company's voting shares, including six of the

[243] *Ibid* at 14.
[244] See for example, Baillie Gifford & Co, 'Baillie Gifford & Co TCFD Climate Report Our perspective on the risks and opportunities associated with climate change', (March 2021), Baillie Gifford & Co TCFD Climate Report - March 2021; NatWest Group plc, 'Climate-related disclosures report 2020', (February 2021), at 8, 2020-climate-related-disclosure-report.pdf (natwestgroup.com).
[245] See for example, HSBC, 'HSBC Holdings plc Task Force on Climate-related Financial Disclosures ('TCFD') Update 2020', (2021), https://www.hsbc.com/-/files/hsbc/investors/hsbc-results/2020/annual/pdfs/hsbc-holdings-plc/210223-task-force-on-climate-related-financial-disclosures-tcfd-update-2020.pdf; Barclays, 'Barclays PLC Climate-related Financial Disclosures 2020', at 2, Barclays-TCFD-Report-2020.pdf (home.barclays); Standard Chartered, 'Task Force on Climate-related Financial Disclosures (TCFD) 2020', tcfd-climate-change-disclosure-2020.pdf.
[246] Royal London and Royal London Asset Management, 'Our climate change commitments', (November 2019), our climate change commitment (royallondon.com); Aviva UK, 'Aviva becomes the first major insurer worldwide to target Net Zero carbon by 2040', (1 March 2021), Aviva becomes the first major insurer worldwide to target Net Zero carbon by 2040 - Aviva plc; AXA UK, 'Climate report: renewed action in a time of crisis', (June 2020), AXA2020_RAPPORTCLIMAT_V4.indd (axa-contento-118412.eu).
[247] Legal & General Group Plc, 'Addressing climate change is the next step in delivering on inclusive capitalism, 2020 Climate Report in line with recommendations from the Task Force on Climate-related Financial Disclosures', (2020), at 2, fy2020-lg-tcfd-report.pdf (legalandgeneralgroup.com).
[248] BlackRock, 'BlackRock 2020 TCFD Report', (2020) at 31, https://www.blackrock.com/corporate/literature/continuous-disclosure-and-important-information/tcfd-report-2020-blkinc.pdf.
[249] *Ibid.*
[250] *Ibid* at 28.
[251] IIGCC, 'BP 2019 shareholder resolution & supporting statement', BP 2019 shareholder resolution & supporting statement – IIGCC. See also Climate Action 100+, Climate Action 100+.

UK's 10 largest fund managers, co-filing the resolution for BP's annual general meeting.[252] The shareholder proposal called on BP to implement a number of robust climate-related reporting requirements, including how the company evaluates the consistency of each new material capital investment with the goals of the Paris; related metrics and targets, consistent with the goals of the Paris Agreement, together with the anticipated levels of investment in oil and gas and other energy technologies; targets to promote operational GHG reductions; the estimated carbon intensity of energy products; and the linkage of the company's targets.[253] After the shareholders engaged with the BP board, it decided to support the resolution.

The four major accounting firms support the UK Government's TCFD disclosure framework.[254] The Government's policy initiatives have been supported by the Institute of Chartered Accountants in England and Wales, with 186,000 members.[255] The Institute reports that in addition to providing climate-related disclosures, all companies need to ensure that the current or future impacts of climate change are reflected appropriately in the financial statements, noting, for example, the impacts of climate change are already affecting the valuation of assets and assumptions used in impairment testing and depreciation rates.[256] Law firms are educating their clients on TCFD framework best practices.[257]

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[252] Climate Action 100+, 'AGM Resolution for BP to Address Climate Change Risks Receives Unprecedented Investor Backing', (14 May 2019), AGM resolution for BP to address climate change risks receives unprecedented investor backing | Climate Action 100+. See also the case study of BP in Climate Action 100+, '2020 Progress Report', (17 December 2020), CA100-Progress-Report.pdf (climateaction100.org). Climate Action 100+ has 545 investor signatories, responsible for over USD52 trillion in assets under management and engaging with 167 companies through the initiative.

[253] Climate Action 100+, 'AGM Resolution for BP to address climate change risks receives unprecedented investor backing', (14 May 2019), AGM resolution for BP to address climate change risks receives unprecedented investor backing | Climate Action 100+.

[254] See for example, PWC, 'FCA confirms climate disclosures for premium-listed companies', (January 2021), fca-confirms-climate-disclosures-for-premium-listed-companies.pdf (pwc.co.uk); Deloitte, 'TCFD reporting requirements and assurance considerations: A guide for audit committees', deloitte-uk-tcfd-reporting-requirements-and-assurance-considerations.pdf; PWC UK, 'Climate change: Five challenges for FS regulators', (2021), Climate change: Five challenges for FS regulators - PwC UK.

[255] Institute of Chartered Accountants in England and Wales (ICAEW), 'UK Government steps up mandatory climate-related financial disclosure plans', (24 March 2021), UK ups mandatory climate-related financial disclosure plans | ICAEW.

[256] ICAEW, 'Reporting on climate change', (14 May 2021), Reporting on climate change | ICAEW.

[257] See, for example, Allen & Overy, 'Enhanced climate-related financial risk disclosure for companies with UK-listed shares', (5 February 2021), Enhanced climate-related financial risk disclosure for companies with UK-listed shares - Allen & Overy (allenovery.com); Freshfields, 'Climate reporting in the UK: sweeping changes across all sectors', (3 December 2020), Climate reporting in the UK: sweeping changes across all sectors, Alice Skupski, Anthea Bowater, Vanessa Jakovich (freshfields.com); Freshfields, 'A further step towards mandatory TCFD-aligned climate-related financial disclosures in the UK', (29 March 2021), A further step towards mandatory TCFD-aligned climate-related financial disclosures in the UK, Vanessa Jakovich, Simon Duncombe, Rós Ní Dhubháin, Catherine Greenwood-Smith (freshfields.com); Linklaters, 'UK FRC review of corporate climate reporting concludes more needs to be done to meet investor expectations', (12 November 2020), UK: FRC review of corporate climate reporting concludes more needs to be done to meet investor expectations | LinkingESG | Blogs | Linklaters; Burges Salmon, 'TCFD Climate-related Reporting by Companies in the UK', (2021), TCFD Climate-related Reporting by Companies in the UK (burges-salmon.com).

The TCFD 2020 Status Report reports that 341 firms in the UK have officially endorsed the TCFD recommendations.[258] Of this number, 206 are in the financial sector, including 122 banks and 34 private equity firms. Other sector companies include: real estate (11), energy (12), information technology (13), industrial (23), consumer goods (13), materials (6), and utilities (9).[259]

A scan of media reports and public statements by UBC PhD student Helen Tooze over the past year has revealed remarkably little public opposition to the decision to move to mandatory disclosure.[260] The level of support seems attributable to a number of factors, including strong leadership by both politicians and regulators, the Government's emphasis on climate opportunities and the UK becoming an international hub for green finance, a number of public-private collaborations on best practices guidance, with consultations that were not allowed to slow down actual regulation decisions and implementation, and ongoing cooperation between prudential and other regulatory authorities at each stage of enhancing mandatory disclosures.

V. Conclusion

This summary overview of UK TCFD-aligned mandatory disclosure regulation offers a roadmap for Canadian and other regulators. The UK Government has made a business case for moving to mandatory TCFD-aligned disclosure across the entire UK economy. Critically important is the observation by UK regulators that given the urgency of the climate emergency, incomplete or missing data should not become a reason for inaction and that some disclosures are better than none, with organizations making clear in their disclosures their methodologies and assumptions, any concerns regarding deficiencies in data, and the indicative nature of any forward-looking analysis.

UK prudential supervisors, securities regulators, and corporate regulators have published a comprehensive set of materials that can be adapted to Canadian securities, corporate, pension, and financial services law. Canadian regulators can take comfort in the fact that many aspects of the UK Government's shift towards a mandatory disclosure regime occurred without serious pushback from the corporate and financial sector. Key has been close cooperation and coordination between prudential oversight supervisors, securities regulators, and government departments with oversight of corporations and pension funds.

There are several initiatives underway in Canada at the federal level already, including incorporating mandatory TCFD disclosure for Crown corporations and for large entities receiving pandemic-related bridge financing; and through the OSFI and Bank of Canada collaboration with six of Canada's large financial institutions on pilot scenario testing. The Expert Panel on Sustainable Finance proposed a framework for graduated, mandatory TCFD disclosure based on company size.[261] Most recently, the Sustainable Finance Action Council

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[258] Supporters | Task Force on Climate-Related Financial Disclosures (fsb-tcfd.org).
[259] *Ibid.*
[260] Research conducted by Helen Tooze from May 1-14, 2021, email correspondence May 14, 2021.
[261] Expert Panel on Sustainable Finance, *Final Report of the Expert Panel on Sustainable Finance - Mobilizing Finance for Sustainable Growth,* Expert panel sustainable finance - Canada.ca.

was established by Deputy Prime Minister and Minister of Finance Chrystia Freeland and Minister of Environment and Climate Change Jonathan Wilkinson to bring together a regionally diverse group of representatives from banks, insurance companies, and pension funds in order to advance the Expert Panel recommendations. The Government has stated that the "council's early emphasis will be on enhancing climate-related financial disclosures in Canada's private and public sector, aligned with the recommendations of the Taskforce on Climate-related Financial Disclosures".[262] The Council should be able to be guided in part by regulatory developments in the UK.

Canadian securities regulators made an important start in their Staff Notices in 2018 and 2019, observing that climate-related information is already required to be disclosed by Canadian issuers if it is material.[263] A TCFD-aligned mandate will clarify issuers' obligations and give guidance on materiality. As the UK Government has observed, declaring climate risk material puts an end to the materiality debate and allows companies and other entities across the economy to focus on the types and extent of the risks and their plans to manage the risks and opportunities. Canada's corporate regulators can learn from the UK insights on the need to extend mandatory disclosure to private companies and limited liability partnerships that have economic activities that are significant such that their failure to mange climate-related risks can hinder the path to net-zero carbon emissions.

Building on the UK's successes, federal, provincial and territorial regulators need to develop a co-ordinated roadmap of disclosure and climate governance regulation to create certainty and transparency across all sectors of the Canadian economy. The kind of cooperative collaboration among financial industry representatives and regulators evident in the UK's Climate Financial Risk Forum, which we view as important to the smooth roll-out of TCFD mandates in the UK, can be replicated in Canada. Canadian regulators are well-positioned to provide national leadership on the next steps for transparent and comprehensive disclosure of climate-related financial risks and opportunities. The Canada Climate Law Initiative is ready to support that effort, however it can be helpful.

[262] Department of Finance Canada, *Canada Launches Sustainable Finance Action Council*, (12 May 2021), Canada launches Sustainable Finance Action Council - Canada.ca.
[263] CSA, Staff Notice 51-358, note 173; CSA Staff Notice 51-354, note 173.


Canada Climate Law Initiative
L'Initiative canadienne de droit climatique