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To:
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and to:
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Re: CAPSA Guideline Environmental, Social and Governance Considerations in Pension Plan Management

Thank you for the opportunity to make submissions on CAPSA's draft Guideline on Environmental, Social and Governance Considerations in Pension Plan Management (ESG Guideline).[1] The Canada Climate Law Initiative (CCLI) supports the three very broad principles contained in the Guideline; however, our view is that the baseline it sets by including only three principles is too low and not in alignment with regulatory developments internationally. The CCLI believes that pension climate governance should have specific requirements, as we discuss in this letter.

The CCLI is a collaboration of the faculties of law at the University of British Columbia and York University that examines the legal basis for corporate directors, officers, pension fiduciaries, and asset managers to manage and report on climate-related financial risks and opportunities, publishing guidance on effective climate governance and working closely with the legal and accounting professions.[2] We work with 15

[1] CAPSA/ACOR, draft "Guideline on Environmental, Social and Governance Considerations in Pension Plan Management" (9 June 2022), 1914 (capsa-acor.org) (hereafter draft ESG Guideline).
[2] See for example, Janis Sarra, Roopa Davé, Meghan Harris-Ngae, and Ravipal Bains, *Audit Committees and Effective Climate Governance, A Guide for Boards of Directors* (CCLI, December 2020), Guide-for-Audit-Committees-on-Effective-Climate-

Affiliated Research Scholars from universities across Canada in policy analysis, empirical research, and advancing climate-related best practices. To date, our 68 Canadian Climate Governance Experts have made presentations to more than 100 corporate and pension boards in Canada on effective climate governance. Half of these knowledge-sharing sessions have been to pension boards. We have held sessions at over 250 webinars and national conferences of directors, corporate counsel, asset managers, and pension fiduciaries. The CCLI is the Canadian partner of the global Commonwealth Climate and Law Initiative, founded at Oxford University, United Kingdom.

Our comments in this submission are limited to the climate change aspects of the proposed ESG Guideline, but CCLI has three overall observations regarding ESG more generally. The first is the notable silence in the draft guideline regarding Indigenous rights and knowledge and the pressing need for reconciliation to become a consideration in overall governance and risk management of pension plan investments. The second is that the 'social' part of the guideline is very underdeveloped, with no mention of human rights or other significant issues that require attention. There have been considerable developments in understanding human rights, just transition, diversity, equity, and inclusion as critically important aspects of ESG, and we believe CAPSA has an important opportunity to offer more guidance to Canadian-regulated pension plan oversight and management. Third, there is a deep interconnection between governance of climate-related financial risks and opportunities and all the other aspects of ESG, such as protection of biodiversity and human rights, and although there is one reference in the draft guideline to "interrelatedness/correlation with other risks", guidance regarding this interrelatedness should be offered to pension fiduciaries to help support them meeting their duties of effective oversight of investments and risk management.

The CCLI agrees that the ESG Guideline should apply to all types of defined contribution (DC), defined benefit (DB), and target benefit pension plans, including single employer, jointly sponsored, and multi-employer pension plans. The CCLI appreciates that the ESG Guideline is aimed at supporting plan administrators in fulfilling their fiduciary obligations and that consideration of ESG factors can provide valuable insight on investment risks and opportunities, have a material effect on investment returns over varying time horizons, and identify paths to acting prudently to identify risks and opportunities that may impact the plan. We also agree that "ignoring or failing to consider ESG factors that may be potentially material to the fund's financial performance could be a breach of fiduciary duty".[3] The CCLI supports the statements at the end of the guideline encouraging pension plan administrators to keep pace with recommendations for pension funds set out by the International Sustainability Standards Board (ISSB) and the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD). We would go further and recommend regulations pursuant to federal, provincial, and territorial pension legislation of some baseline requirements in respect of pension fund climate governance.

We make five recommendations that would enhance the climate-related aspects of the draft ESG Guideline, with our reasons following:

> CCLI Recommendation 1: *Fiduciary Duty* – In order to ensure that pension plan administrators and other pension fiduciaries are able to fulfill their fiduciary duties to plan members and beneficiaries, the Guideline should set clear baseline standards they should meet with respect

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Governance.pdf (ubc.ca); Comités d'audit et gouvernance climatique efficace, Guide à l'intention des conseils d'administration - Canada Climate Law Initiative (ubc.ca); see also CPA Canada, "Climate Change – A Role for Audit Committees" (July 2022), https://www.cpacanada.ca/en/business-and-accounting-resources/strategy-risk-and-governance/corporate-governance/publications/audit-committee-oversight-climate-change.

[3] Draft ESG Guideline, note 1 at 4.

to climate risk management, including identification, oversight, and management of climate-related risks and opportunities that are material to the financial risk-return profile of the pension fund's investments.

CCLI Recommendation 2: *Governance* - CAPSA should adopt specific requirements for plan administrators and other pension fiduciaries, requiring them to clearly identify and disclose governance processes, controls, and procedures used to monitor and manage climate-related risks and opportunities; the frequency by which the board and/or board committees discuss climate-related matters, including in their strategic planning; how climate matters are reflected in the pension fund's board mandates and investment policies; and how pension fiduciaries are ensuring the appropriate skills and competencies are available to oversee strategies designed to respond to climate-related risks and opportunities.

CCLI Recommendation 3: *Risk Management* - Pension fiduciaries should be required to identify the processes and tools they use to identify, assess, prioritize, monitor, and manage climate-related risks and opportunities; and the extent to which and how the climate-related risk and opportunity identification, assessment, and management processes are integrated into the entity's overall investment and risk management processes.

CCLI Recommendation 4: *Transition Plans* - Pension fiduciaries should develop and implement a transition plan to net-zero greenhouse gas (GHG) emissions, including short-term interim targets, as an integral part of their duty of care, ensuring the plan is, at minimum, in line with Canada's international and domestic commitment to net-zero emissions. Pension fiduciaries should have as an objective of the transition plan, a fair, equitable, and just transition.

CCLI Recommendation 5: *Transparency and Accountability* - Pension fiduciaries should be required to annually disclose the pension fund's oversight and management of climate-related governance, strategy, risk management, targets, and metrics in their financial reporting.

I. Fiduciary Duty and Climate Governance

The CCLI supports Principles 1 and 2 of the draft ESG Guideline, but believes they should have more specificity in respect of climate matters. Currently, the draft specifies:

> Principle 1: Pension plan administrators (either directly or through their delegates) should consider ESG characteristics that may have material relevance to the financial risk-return profile of the pension fund's investments.
>
> Principle 2: Plan administrators, as part of their standard of care, need to assess whether their plan governance, risk management and investment decision-making practices are sufficient to identify and respond to material ESG information in a manner proportionate to their plans and appropriate for their investment beliefs.[4]

[4] Draft ESG Guideline, note 1 at 4-5.

Legal opinions in Canada and globally have uniformly opined that pension fiduciaries have an obligation to consider and manage climate-related financial risks and opportunities.[5] Effective pension plan governance enables pension plan administrators to deliver on the pension promise consistent with the pension plan documents and pension legislation, and is essential if pension plan members and beneficiaries are to receive the benefits they are entitled to. We note that 'pension plan administrator' includes a broad definition under the relevant legislation, including: the employer that established the plan, a pension committee, board of trustees, insurance company offering pension products, bargaining agent, or another body established or permitted by law.[6]

The CCLI agrees with CAPSA that an effective pension governance system establishes a framework for defining the duties, associated responsibilities, and accountabilities for all participants in the governance process, covers all facets of pension plan management, including communication, funding, investments and benefit administration, and provides careful oversight while enhancing protection for plan members and beneficiaries.[7] We also agree that effective governance is essential for meeting fiduciary and other responsibilities, minimizes risks, promotes accurate, timely, and cost-effective delivery of pension benefits, promotes administration of the plan in the best interests of plan members and beneficiaries, requires control mechanisms that encourage good decision-making, clear accountability, and regular review and evaluation, and contributes to positive pension plan performance.[8]

Although the draft ESG Guideline advises that it should be read in conjunction with CAPSA Guideline No. 4 Pension Plan Governance, CAPSA should offer more guidance, by taking its governance principles and articulating how climate governance can be embedded in each of these principles. Regarding principle 1 in Guideline No. 4,[9] we believe the ESG Guideline would be enhanced by adding clear direction that all plan administrators and other pension fiduciaries must identify and manage climate-related matters:

> CCLI Recommendation 1: *Fiduciary Duty* – In order to ensure that pension plan administrators and other pension fiduciaries are able to fulfill their fiduciary duties to plan members and beneficiaries, the Guideline should set clear baseline standards they should meet with respect to climate risk management, including identification, oversight, and management of climate-related risks and opportunities that are material to the financial risk-return profile of the pension fund's investments.

The draft ESG Guideline acknowledges that "climate change is now accepted as posing material and urgent financial risks and opportunities" affecting the financial system as a whole, yet it fails to set baseline standards that all pension fiduciaries should meet. Given the recognition by Canadian appellate courts, as well as over 800 scientists representing 185 member countries of the Intergovernmental Panel on Climate Change (IPCC), that climate change poses an existential threat to humanity, merely considering ESG characteristics is not sufficient.

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[5] See for example, Randy Bauslaugh, "Climate Change Legal Implications for Canadian Pension Plan Fiduciaries and Policy-Makers", McCarthy Tétrault LLP, (26 May 2021), Bauslaugh-Pension-Opinion-1.pdf (ubc.ca); N C Hutley and J E Mack, 'Memorandum of Opinion: Superannuation Trustee Duties and Climate Change' (Equity Generation Lawyers, 16 February 2021) at 5-6, Microsoft Word - 210216 Final Advice for Hutley - Superannuation Trustee Duties and Climate Change.docx (equitygenerationlawyers.com).

[6] CAPSA/ACOR, "Guideline No. 4: Pension Plan Governance Guideline", (December 2016), at 2 (hereafter Guideline No. 4). "Delegates may include employees of the plan administrator and external third party service providers."

[7] Guideline No. 4, note 6 at 3.

[8] Guideline No. 4, note 6 at 3.

[9] Principle 1: Fiduciary responsibility - The plan administrator has fiduciary responsibilities to plan members and beneficiaries. The plan administrator may also have other responsibilities to other stakeholders. Guideline No. 4, note 6.

CAPSA's Guideline No. 4 Pension Plan Governance makes clear that the fiduciary responsibility is to pension plan members and beneficiaries. The plan administrator and delegates must act honestly, in good faith, with the care, skill, and diligence of a prudent person in the best interests of plan members and beneficiaries of the pension plan as part of their fiduciary responsibilities. These fiduciary obligations require treating members and beneficiaries impartially, considering intergenerational interests including members currently accruing a pension, pension beneficiaries, and others who may be entitled to a benefit from the plan; interpreting the plan terms fairly and impartially; managing conflicts of interest; and ensuring that members and beneficiaries receive promised benefits.[10] Given these responsibilities, CAPSA should be offering much more guidance on effective climate governance that will ensure all pension fiduciaries are actively managing and monitoring risks and opportunities.

II. CAPSA needs to adopt specific requirements for pension fiduciaries aligned with the TCFD and ISSB

The three principles articulated by CAPSA are not sufficient to move Canadian pension funds towards a sustainable achievement of the pension promise. While the CCLI agrees that 'materiality' is a key threshold for action, we recommend adopting the approach of TCFD and ISSB, that governance and risk management be identified, managed, and disclosed irrespective of an assessment of materiality. The TCFD's rationale for requiring disclosure of governance and risk management irrespective of a materiality assessment is that climate-related risk is a non-diversifiable risk that affects nearly all industries/sectors and requires special attention so that pension stakeholders have insight into the governance and risk assessment context in which financial and operating results are achieved.[11]

> **CCLI Recommendation 2:** *Governance* - CAPSA should adopt specific requirements for plan administrators and other pension fiduciaries, requiring them to clearly identify and disclose governance processes, controls, and procedures used to monitor and manage climate-related risks and opportunities; the frequency by which the board and/or board committees discuss climate-related matters, including in their strategic planning; how climate matters are reflected in the pension fund's board mandates and investment policies; and how pension fiduciaries are ensuring the appropriate skills and competencies are available to oversee strategies designed to respond to climate-related risks and opportunities.

Aligning with principles 2 to 6 of CAPSA's Guideline No 4, we believe the ESG Guideline should specify that pension fiduciaries should clearly identify and document the roles, responsibilities, and accountabilities of all participants in the pension plan governance of climate-related risks and opportunities, including governance, risk management, strategy, and metrics and targets in the immediate, short, medium, and long term; the plan administrator should ensure it has the knowledge and skills needed to meet its responsibilities to manage climate-related risks and opportunities; it should establish and document performance measures, linking executive compensation to achieving the plan's transition plan; and that the plan administrator should establish and document a process to obtain and provide to governance participants appropriate information to meet fiduciary and other responsibilities.

CCLI agrees that plan administrators should ensure that any climate-related practices, including engagement, proxy-voting, investment, and/or divestment, remain consistent with their fiduciary

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[10] Guideline No. 4, note 6 at 6.

[11] TCFD, "Implementing the Recommendations of the Task Force on Climate-Related Financial Disclosures," (June 2017), at 11, https://assets.bbhub.io/company/sites/60/2020/10/FINAL-TCFD-Annex-Amended-121517.pdf.

obligation to provide retirement income.[12] We also agree with the observation that "Given the evolving nature of ESG considerations, ensuring prudent governance practices in relation to ESG creates a need for plan administrators to address whether they have the relevant skills, resources and experience, and/or obtain third-party expertise as needed to ensure they are meeting their standard of care."[13]

Principle 7 of the CAPSA Guideline No. 4: Pension Plan Governance states that "The plan administrator should establish and document a framework and ongoing processes, appropriate to the pension plan, to identify and manage the plan's risks." The CCLI agrees that ESG risks have important characteristics relevant to risk identification, evaluation, prioritization, and management that should be considered, such as complexity, longer time horizons, interrelatedness with other risks, and an evolving understanding of their impact and effective management strategies.[14] Here again, while all ESG factors are increasingly critically important, the CCLI believe that the climate crisis and the urgent need to mitigate the effects of global warming create some urgency in imposing greater requirements and standards on pension plans.

In this respect, guidance can be found in the ISSB exposure draft S2 Climate-related Disclosures, which recommends that entities identify the processes they use to identify climate-related risks for risk management purposes, including how they assess the likelihood and effects associated with such risks; how they prioritize climate-related risks relative to other types of risks, including their use of risk-assessment tools; the input parameters they use, such as data sources; the processes they use to identify, assess, prioritize, monitor, and manage climate-related risks and opportunities; the extent to which and how the climate-related risk and opportunity identification, assessment, and management processes are integrated into the overall risk management process.[15]

> **CCLI Recommendation 3:** *Risk Management* - Pension fiduciaries should be required to identify the processes and tools they use to identify, assess, prioritize, monitor, and manage climate-related risks and opportunities; and the extent to which and how the climate-related risk and opportunity identification, assessment, and management processes are integrated into the entity's overall investment and risk management processes.

Stewardship is part of prudent investment decision making, including engaging directly or indirectly with investee companies, assets, investment managers, or other market participants on climate-related and other ESG matters.[16] We support the recognition in the draft ESG Guideline that stewardship activities may include, but are not limited to, engagement with investee companies or potential investees, voting at shareholder meetings, filing shareholder resolutions/proposals, direct roles on investee boards and board committees, negotiation with and monitoring of the stewardship actions of suppliers in the investment chain, engagement with policymakers, contributions to public goods such as research and public discourse, and, where necessary, litigation.[17] The CCLI agrees with CAPSA that by documenting their approach to voting and other stewardship, plan administrators can facilitate discipline in their voting activities and provide transparency to plan stakeholders.[18] It is also important, for plans relying on third-party investment managers, to integrate climate stewardship considerations into the plan's investment activities, to

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[12] Draft ESG Guideline, note 1 at 4.
[13] Draft ESG Guideline, note 1 at 5.
[14] Draft ESG Guideline, note 1 at 6.
[15] IFRS S2 Climate-related Disclosures, Exposure Draft IFRS S2 Climate-related Disclosures, (March 2022) at para 17, Exposure Draft IFRS S2 Climate-related Disclosures (hereafter IFRS S2).
[16] CAPSA Guideline No. 6 Prudent Investment Practices.
[17] Draft ESG Guideline, note 1 at 9.
[18] Draft ESG Guideline, note 1 at 9.

articulate and document the plan's climate stewardship expectations in the service-provider agreement; to work to encourage a robust and transparent process by investment managers; and to monitor the effectiveness of delivery over time.[19]

However, the CAPSA draft Guideline is not keeping pace with international regulatory developments in respect of supervisory oversight and effective pension fund governance in respect of climate-related matters. For example, the United Kingdom (UK) government's Department for Work and Pensions (DWP) introduced requirements for trustees of occupational pension schemes, in force October 2021, with the largest pension schemes required to publish their first TCFD-aligned disclosures within seven months of end of the scheme year. The Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021 introduced new requirements relating to reporting in line with the TCFD recommendations, to improve both the quality of governance and the level of action by trustees in identifying, assessing, and managing climate risk.[20] Further regulation introduced disclosure requirements relating to the reports required.[21] In December 2021, the UK issued *Governance and reporting of climate-related risks and opportunities*.[22]

As the UK Government has observed, "All pension schemes are exposed to climate-related risks, whether investment strategies and mandates are active or passive, pooled or segregated, growth or matching, or have long or short time horizons."[23] It offers four rationales why mandatory management and disclosure of climate change is required:

- *Far-reaching impact in breadth and magnitude:* climate change will affect all actors in the economy, across all sectors and geographies. The risks will likely be correlated with and potentially aggravated by tipping points, in a non-linear fashion. This means the impacts could be much larger, and more widespread and diverse than those of other structural changes.

- *Foreseeable nature:* while the exact outcomes, time horizon and future pathway are uncertain, there is a high degree of certainty that some combination of physical and transition risk will materialize in the future.

- *Irreversibility*: the impact of climate change is determined by the concentration of greenhouse gas emissions in the atmosphere and there is currently no mature technology to reverse this process. Above a certain threshold, scientists have shown with a high degree of confidence that climate change will have irreversible consequences on our planet, though uncertainty remains about the exact severity and horizon.

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[19] Draft ESG Guideline, note 1 at 9.

[20] Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021, The Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021 (legislation.gov.uk). See also The Occupational Pension Schemes (Climate Change Governance and Reporting) (Miscellaneous Provisions and Amendments) Regulations 2021, The Occupational Pension Schemes (Climate Change Governance and Reporting) (Miscellaneous Provisions and Amendments) Regulations 2021 (legislation.gov.uk).

[21] The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, as amended ("the Disclosure Regulations").

[22] UK The Pensions Regulator, *Governance and reporting of climate-related risks and opportunities,* December 2021), Climate change governance guidance | The Pensions Regulator.

[23] UK Government Department for Work and Pensions, *Guidance Aligning your pension scheme with the Taskforce on Climate-Related Financial Disclosures recommendations* (27 January 2021), at 11, Aligning your pension scheme with the TCFD recommendations (publishing.service.gov.uk).

- *Dependency on short-term actions:* the magnitude and nature of the future impacts will be determined by the actions taken today, which thus need to follow a credible and forward-looking policy path.[24]

In 2021, the government issued statutory guidance,[25] requiring trustees to carry out the following activities "as far as they are able" and issued guidance on aligning pension schemes with the TCFD recommendations.[26] They are to:

• undertake scenario analysis, taking into account the potential impact of climate change on the scheme's assets and liabilities, the resilience of the scheme's investment strategy, and the resilience of any funding strategy;

• obtain the Scope 1, Scope 2, and Scope 3 greenhouse gas emissions and other data relevant to their chosen metrics. (Scope 3 after first year they are subject to the requirements, recognizing that data and methodologies for Scope 3 emissions are less developed); [27]

• use the data obtained to calculate their selected metrics;

• use the metrics they have calculated to identify and assess the climate-related risks and opportunities which are relevant to the scheme;

• measure the performance of the scheme against the target they have set in relation to one of their selected metrics.[28]

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[24] UK HM Government, *Green Finance Strategy Transforming Finance for a Greener Future* (July 2019), at 18, BEIS Green Finance Strategy July 2019 (publishing.service.gov.uk).

[25] Guidance is Statutory Guidance produced under sections 41A(7) and 41B(3) of the *Pensions Act 1995* and section 113(2A) of the *Pension Schemes Act 1993, Governance and reporting of climate change risk: guidance for trustees of occupational schemes* (June 2021), Governance and reporting of climate change risk: guidance for trustees of occupational schemes (publishing.service.gov.uk) (hereafter *Governance and reporting of climate change risk: guidance for trustees of occupational schemes*). Trustees of schemes whose relevant assets are £5 billion or more at the end of their first scheme year ending on or after 1 March 2020 are subject to the climate change governance requirements from 1 October 2021 or, if later, from the date they obtain audited accounts in relation to that scheme year ("first wave"). Trustees of authorized master trusts will be subject to the governance requirements from 1 October 2021 or, if later, the date the trust becomes authorized. Trustees of authorized schemes (once established) providing collective money purchase benefits will be subject to the governance requirements from the date the scheme is authorized. Trustees of schemes which are not captured by the first wave and whose relevant assets are £1 billion or more at the end of their first scheme year ending on or after 1 March 2021 will be subject to the governance requirements from 1 October 2022 or, if later, the date they obtain audited accounts in relation to that scheme year ("second wave"). Trustees of schemes captured by neither the first nor second waves whose relevant assets are £1 billion or more at the end of a scheme year which falls on or after 1 March 2022 will be subject to the governance requirements from the beginning of the scheme year which is one scheme year and one day after the scheme year end date when the relevant assets were £1 billion or more. Trustees must produce and publish a TCFD report, containing the information required by Part 2 of the Schedule to the Climate Change Governance and Reporting Regulations, within 7 months of the end of any scheme year in which they were subject to the climate change governance requirements. Regulation 6(2) provides for limited exceptions to this requirement.

[26] UK Government Department for Work and Pensions, *Guidance Aligning your pension scheme with the Taskforce on Climate-Related Financial Disclosures recommendations* (27 January 2021), Aligning your pension scheme with the Taskforce on Climate-Related Financial Disclosures recommendations - GOV.UK (www.gov.uk).

[27] UK Financial Conduct Authority, *Enhancing climate-related disclosures by asset managers, life insurers and FCA-regulated pension providers Policy Statement PS21/24* December 2021, FCA 2021/62, at 3.16, https://www.fca.org.uk/publication/policy/ps21-24.pdf (hereafter *PS21/24*).

[28] Paragraphs 6, 7, 18, 19, 20, of the Schedule to the Climate Change Governance and Reporting Regulations.

Requirements to undertake the relevant activities as far as they are able recognize that there may be gaps in the data that trustees are able to obtain about their scheme assets for the purposes of carrying out scenario analysis or calculating metrics.[29] Yet the government is clear that trustees need to make best efforts. If trustees are able to obtain data or analysis in a format that is usable but only at a cost they believe to be disproportionate, they may make the decision to treat these data or analysis as unobtainable; however, they are required to make a "robust justification for doing so" in their TCFD report and they must prioritize engagement on persistent data gaps that are likely to make the most material difference to accurately assessing the level of climate-related risk or opportunity.[30]

The UK guidance notes that trustee investment powers must be exercised with the "care, skill and diligence" that "a prudent person would exercise when dealing with investments for someone else for whom they feel morally bound to provide", noting that standards continue to evolve and what may be considered prudent in relation to climate-related risks today might no longer meet that standard in the future.[31]

The UK requires that governance and risk management activities should be carried out for the whole pension scheme; and that trustees undertake strategy activities, including scenario analysis and reporting.[32] Trustees of pension schemes must produce a TCFD report in accordance with the Climate Change Governance and Reporting Regulations, under the pillars of governance, strategy, risk management, targets and metrics.[33] Trustees are required to ensure internal processes and controls are in place to manage climate-related risks and opportunities, including decisions relating to investment strategy and how it should be implemented, funding, the ability of the sponsoring employer to support the scheme and liabilities, establishing processes to satisfy themselves that any person undertaking governance activities takes adequate steps to identify, assess, and manage any climate-related risks and opportunities that are relevant to those activities, and establish processes to satisfy themselves that others advising or assisting the trustees with respect to governance activities take adequate steps to identify and assess any relevant climate-related risks and opportunities that are relevant to the matters on which they are advising or assisting, and allocate time and resources for meeting their obligations on climate change governance and reporting.[34] Trustees must also ensure that the scheme's governance process and structure provides them with adequate oversight of how those governing the scheme, on their behalf, are managing the scheme and adequately assessing and managing climate-related risks and opportunities. Trustees should ensure that persons to whom they have assigned climate-related responsibilities have clear directions in terms of how and when they inform trustees of their work.[35] The UK Pensions Regulator Trustees has warned pension trustees that they must ensure they get the advice they need from appropriately skilled and competent advisers.[36]

In 2022, the UK government announced that it will require pension schemes to measure and publish how their investments support the Paris Agreement climate goal of limiting global warming to 1.5 degrees

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[29] *Governance and reporting of climate change risk: guidance for trustees of occupational schemes*, note 25 at 8.
[30] *Governance and reporting of climate change risk: guidance for trustees of occupational schemes,* note 25 at 9.
[31] *Governance and reporting of climate change risk: guidance for trustees of occupational schemes,* note 25 at 3.
[32] *Governance and reporting of climate change risk: guidance for trustees of occupational schemes,* note 25 at 9.
[33] Part 2 of the Schedule to the Regulations.
[34] *Governance and reporting of climate change risk: guidance for trustees of occupational schemes,* note 25 at 17-19.
[35] *Governance and reporting of climate change risk: guidance for trustees of occupational schemes,* note 25 at 2.
[36] UK The Pensions Regulator, "Trustees must ensure climate advisers have the right skills, Ref: PN21-26", (16 December 2021), Trustees must ensure climate advisers have the right skills | The Pensions Regulator.

Celsius above pre-industrial levels.[37] In July 2022, it also announced a new ministerial led taskforce to support pension scheme engagement with social factors in ESG investing.[38]

The DWP requirements align with the UK Financial Conduct Authority (FCA) efforts in support of a 'whole economy' transition to net-zero emissions. The FCA's 2021 Environmental, Social and Governance (ESG) sourcebook contains rules and guidance for asset managers to make disclosures consistent with the TCFD recommendations.[39] It applies to asset managers, life insurers, non-insurer FCA-regulated pension providers, including platform firms and Self-invested Personal Pension operators, and FCA-regulated pension providers. The ESG sourcebook sets out rules and guidance concerning asset managers' and other firms' approach to ESG matters; contains rules and guidance regarding the disclosure of climate-related financial information consistent with TCFD recommendations, intended to help meet the information needs of market participants, including a firm's institutional clients such as pension trustees and pension scheme members.[40] The UK rules require asset managers to make disclosures on an annual basis at the entity-level, requiring an annual TCFD entity report published in a prominent place on the main website setting out how they take climate-related matters into account in managing or administering investments on behalf of clients; and at the product-level, including disclosure of a core set of climate-related metrics on the firm's products and portfolios made publicly in a prominent place on the main website or cross-referenced in an appropriate client communication, or made upon request to certain eligible institutional clients.[41] Recognizing that data and methodologies for Scope 3 emissions are less developed, the UK rules propose that this metric be disclosed from 2024 by all in-scope entities.[42]

Another example is the European Union (EU), which has created specific requirements for pension funds. The EU Regulation 2019/2088 Sustainable Finance Disclosure Regulation (SFDR),[43] in effect March 2021, applies to pension funds and other financial market participants.[44] It requires financial market participants to publicly disclose information about their policies on the integration of sustainability risks; the principal adverse impacts of their investment decisions on sustainability factors; and how their remuneration policies are consistent with the integration of sustainability risks.[45] Rather than just encouraging disclosure, the SFDR requires pension funds to disclose specified information on their websites, in pre-contractual disclosures, and periodic reports.[46] Additional disclosures and explanations are required for financial

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[37] UK Government Department for Work and Pensions, Press release, "New measures to propel 'superpower' of pensions in UK's net zero journey- UK pensions have been given a green boost through new measures which will drive forward ambitions to tackle climate risk", (20 June 2022), New measures to propel 'superpower' of pensions in UK's net zero journey - GOV.UK (www.gov.uk).

[38] UK Government Department for Work and Pensions, "New taskforce to support pension scheme engagement with social factors in ESG investing", (15 July 2022), New taskforce to support pension scheme engagement with social factors in ESG investing - GOV.UK (www.gov.uk).

[39] https://www.fca.org.uk/publications/policy-statements/ps-21-24-climate-related-disclosures-asset-managers-life-insurers-regulated-pensions

[40] *PS21/24,* note 27.

[41] *PS21/24,* note 27 at 1.23.

[42] *PS21/24,* note 27 at 3.16

[43] Regulation 2019/2088 – Sustainable Finance Disclosure Regulation (SFDR), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R2088&from=EN (hereafter SFDR). Adopted in November 2019 by the European Parliament and the Council of the European Union and effective date 10 March 2021, Article 20(2).

[44] It applies to financial market participants and financial advisers, SFDR, Article 1 including investment firms and credit institutions that provides portfolio management, institutions for occupational retirement provision (IORP), manufacturers of pension products, and managers of qualifying venture capital funds, SFDR, note 43, Article 2(1).

[45] Regulation 2019/2088, note 43, Articles 3, 4, 5.

[46] Regulation 2019/2088, note 43, Articles 3, 7 to 11.

products that either have sustainable investment as their objective, or promote environmental or social characteristics, without having sustainable investment as a core objective.[47]

Pension funds must also disclose pursuant to the EU Taxonomy Regulation, which establishes a classification system for environmentally sustainable economic activities.[48] It requires funds to disclose information on how and to what extent their activities and investments in underlying financial products contribute to environmental objectives or qualify as environmentally sustainable under Articles 3 and 9 of the Taxonomy Regulation. They are to publish information on how and to what extent their activities are aligned with the EU Taxonomy.[49]

The CCLI is able to provide other examples globally of regulation. The bottom line is that the CAPSA effort falls short in failing to create a uniform baseline set of requirements that support pension funds, their asset managers, and other service providers in fulfilling their duty to take sufficient steps to oversee and manage climate-related financial risks in the best interests of their plan members and beneficiaries.

III. Require Transition Plans as an Important Component of Fulfilling the Duty of Care

> **CCLI Recommendation 4:** *Transition Plans* - Pension fiduciaries should develop and implement a transition plan to net-zero greenhouse gas (GHG) emissions, including short-term interim targets, as an integral part of their duty of care, ensuring the plan is, at minimum, in line with Canada's international and domestic commitment to net-zero emissions. Pension fiduciaries should have as an objective of the transition plan, a fair, equitable, and just transition.

The CCLI recommends that the ESG Guideline specify that pension fiduciaries should develop and implement a transition plan to transition fund investments to net-zero GHG emissions in line with Canada's international and domestic commitments to transition. Such disclosure should include how portfolio investments advance emissions reductions that align with the transition to net-zero emissions. Transition plans are critically important because they give substance to principled statements on getting to net-zero emissions. Disclosing an entity's transition plan towards net-zero emissions is important for enabling plan members and beneficiaries to assess the pension fund's current and planned responses to the decarbonization-related risks and opportunities that can reasonably be expected to affect the plan's ability to deliver on the pension promise.

A transition plan should disclose a time horizon over which the entity can be reasonably expected to adjust its business model, strategy, and cash flows, its access to finance and its cost of capital, over the short, medium, and long term, linking these timeframes to the entity's strategic planning horizons and capital allocation plans. A pension fund and/or its asset managers should disclose the resources that are being

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[47] Regulation 2019/2088, note 43, Articles 8, 9. Financial products regulated by the SFDR would be subject to additional disclosure requirements pursuant to Articles 5-7 of Regulation 2020/852 (Taxonomy Regulation), Regulation 2020/852.
[48] Regulation 2020/852 Taxonomy Regulation, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0852&from=EN, Articles 2(1) and 2(2), referencing Regulation 2019/2088. Adopted in June 2020 by the European Parliament and Council, with phased-in application, effective 1 January 2022, Article 27(2). See also Delegated Regulation 2021/2178 "Taxonomy Article 8 Disclosures Delegated Act" and the Delegated Regulation 2022/1931 (Regulatory Technical Standards), adopted in July 2021 by the European Commission, and phased-in application starting on 1 January 2022, https://ec.europa.eu/finance/docs/level-2-measures/C_2022_1931_1_EN_ACT_part1_v6%20(1).pdf/.
[49] EUR-Lex, "Document C(2021)4987: Internal Procedure", EUR-Lex - C(2021)4987 - EN - EUR-Lex (europa.eu).

directed to transition, such as research and development investment, capex, and use of revenues to undertake mitigation activities.[50]

The transition plan should describe the oversight and accountability responsibilities of the board of trustees and other pension fiduciaries; specific initiatives, actions, and milestones to effectively complete the transition plan; how an organization plans to reduce GHG emissions across its value chain, including short term interim targets; and sufficient information to enable users to assess the plan's credibility. We believe that the transition plan should be one that has the target of net-zero emissions by 2040 at the very latest, with five-year interim targets and information reporting how these milestones are being achieved.

For example, the University Pension Plan Ontario (UPP), in its Climate Action Plan, is very clear about its objectives: "UPP will transition its investment portfolio to net-zero GHG emissions by 2040, or sooner – consistent with a maximum global average temperature rise of 1.5°C above pre-industrial temperatures in line with the objectives of the Paris Agreement. UPP will emphasize climate resiliency and GHG emission reductions in the real economy".[51] UPP has articulated four core strategies, with clear commitments:

1. EVALUATE - Evaluate climate-related risks, opportunities, and impacts of our current and prospective investments at the total fund and investment mandate levels. Commitments: • Implement a climate transition investment framework and evaluate our portfolio. • Integrate climate risk and opportunity assessment into investment strategy and processes.

2. INVEST - Invest in climate solutions and in line with the transition to a net-zero world, and reduce the GHG intensity of our assets. Commitments: • Invest only in new mandates and assets that align with the transition to a net-zero world. • Reduce our portfolio's carbon footprint by 16.5% by 2025 and 60% by 2030 from a 2021 baseline (as measured by tonnes CO_2-eq / $M invested). • Set a target for new investments in climate solutions. • Selectively exclude investments in companies that present significant climate risk.

3. ENGAGE - Engage with portfolio companies and market actors, including asset managers, to encourage a transition to a resilient, low carbon, net-zero world, and sufficient climate-related disclosure. Commitments: • Engage with at least 20 companies through collective and direct engagement. • Engage with external investment managers to encourage their engagement with companies and emission reductions.

4. ADVOCATE - Advocate for public policy and market systems that support limiting the global average temperature rise to 1.5°C. Commitments: • Participate in direct and collective advocacy with policymakers. • Join the UN-convened Net-Zero Asset Owner Alliance and support industry initiatives that advance climate action.[52]

UPP reports that its climate-related investment actions are guided by its 2022 Statement of Investment Beliefs, including its responsibilities as a long-term investor and its transparency to stakeholders in respect of activities to meet its mandate. UPP is clear about its transition strategy:

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[50] CCLI, Submission to ISSB, at 8-9, Canada Climate Law Initiative Submission to IFRS ISSB on IFRS S2 Climate-related Disclosures - Canada Climate Law Initiative (ubc.ca).
[51] University Pension Plan Ontario (UPP), UPP Climate Action Plan, (June 2022), at 8, UPP-climate-action-plan-june-22.pdf (myupp.ca).
[52] UPP Climate Action Plan, note 51 at 8.

> By investing in climate solutions and in line with the transition to a net-zero world, while reducing the GHG intensity of our assets, we are sending clear signals that we want companies to improve their climate-related practices and transition to resilient, low carbon, and net-zero business strategies. We believe that making profitable investments in these types of assets will create a more resilient portfolio and better outcomes for our members.
>
> As soon as our new climate transition investment framework is operational, we will begin only investing in new mandates that align with the transition to a net-zero world. Over time, we will ensure that our entire investment portfolio aligns with the transition to a net-zero world without compromising on our necessary risk and return requirements. With our climate transition investment framework in place, we will also set targets for new, non-concessionary investments in climate adaptation and mitigation solutions.[53]

UPP's transition strategy offers a clear model that could be adopted by CAPSA, tailored to size and complexity of pension funds across Canada.

Requiring transition plans would also align CAPSA's guidance with the Office of the Superintendent of Financial Institutions (OSFI) proposed Guideline B-15: Climate Risk Management, which states that federally-regulated financial institutions should develop and implement a climate transition plan and incorporate the implications of climate change and the transition to a low-GHG economy in their business model and strategy.[54] OSFI has observed that building resilience to climate-related risk requires "forward-looking approaches that are holistic, integrated, and built on reliable empirical data and sound analyses", assessing the achievability of the transition plan under different climate-related scenarios, and how it measures its progress using metrics and targets.[55] The TCFD has also recommended climate transition plans, including improving comparability of climate-related metrics and targets that support transition consistent with broader economy- or sector-wide science-based pathways to a low-carbon economy.[56] Adopting CCLI's recommendation for transition plans would also align CAPSA's guideline with the United Nations call for a just transition that ensures that the substantial benefits of a green economy transition are shared widely, while also supporting those who stand to lose economically.[57]

IV. Disclosure

> **CCLI Recommendation 5:** *Transparency and Accountability* - Pension fiduciaries should be required to annually disclose the pension fund's oversight and management of climate-related governance, strategy, risk management, targets, and metrics in their financial reporting.

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[53] UPP Climate Action Plan, note 51 at 10-11.
[54] OSFI, Guideline B-15: Climate Risk Management, (26 May 2022), chapter 1, OSFI consults on draft Guideline B-15: Climate Risk Management (osfi-bsif.gc.ca).
[55] OSFI draft Guideline B-15 Climate Risk Management, note 54, Chapter 1.
[56] Financial Stability Board, "Task Force on Climate-Related Financial Disclosures Guidance on Metrics, Targets, and Transition Plans", at 39-44, 2021-Metrics_Targets_Guidance-1.pdf (bbhub.io).
[57] https://unfccc.int/topics/mitigation/the-big-picture/introduction-to-mitigation; https://unfccc.int/topics/adaptation-and-resilience/the-big-picture/what-do-adaptation-to-climate-change-and-climateresilience-mean and UNFCCC Technical Paper Just Transition of the Workforce, and the Creation of Decent Work and Quality Jobs, https://unfccc.int/sites/default/files/resource/Just%20transition.pdf.

Pension standards legislation in legislation across Canada requires the pension plan's statement of investment policies and procedures (SIPP) to include a description of factors relevant to investment policies and procedures; thus, Principle 3 of draft ESG Guideline makes sense:

> Principle 3: Pension plan administrators should disclose in their SIPP, information about the pension fund's investment policies in relation to ESG considerations. Where appropriate, pension plan administrators should also provide reports on their stewardship activities as well as request companies in which they invest to disclose their ESG-related policies.[58]

It aligns with Principle 9 of CAPSA Guideline No. 4, which addresses transparency and accountability, specifying that the "plan administrator should establish and document a communication process with the aim to be transparent and accountable to plan members, beneficiaries and other stakeholders".[59] However, it ignores the fact that at least one provincial pension regulator has recently enacted regulatory changes whereby member-directed defined contribution pension plans no longer have to prepare a SIPP.[60] The physical and transition impacts of climate change are so significant that all pension funds and their asset managers and service providers should be required to disclosure their management of the risks, and thus CCLI recommends that pension fiduciaries should be required to annually disclose the pension fund's oversight and management of climate-related governance, strategy, risk management, targets, and metrics in their financial reporting.

In the context of climate-related issues, given the systemic nature of climate-related risks, globally, standards are moving to greater transparency to stakeholders on the governance processes, controls, and procedures used to monitor and manage climate-related risks and opportunities. CCLI supports that pension fiduciaries disclose the processes, oversight, and frequency by which the board discusses climate-related risks, which will create transparency in the delineation of responsibilities between directors/trustees and managers/service providers, each of which have important roles in ensuring climate change is appropriately dealt with. CCLI suggests that CAPSA require the same level of detail with respect to governance as proposed by the ISSB,[61] including transparency in how responsibilities for climate-related risks and opportunities are reflected in the pension fund's terms of reference, board mandates, and related policies; and information on the frequency with which the board is updated, deliberates, and provides strategic advice and oversight of climate-related risks and opportunities.

The CCLI supports the requirement to disclose information that will enable pension members and beneficiaries to understand the effects of significant climate-related risks and opportunities on the fund's strategy and decision-making, including its transition plan, current and anticipated changes to its investment strategy, mitigation efforts it is undertaking both directly and in its value chain, processes in place for review of the targets, and reporting progress in emission reductions.

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[58] Draft ESG Guideline, note 1.

[59] Guideline No. 4, note 6, Principle 10: Code of conduct and conflict of interest - The plan administrator should establish and document a code of conduct, incorporating a policy to manage conflicts of interest. Principle 11: Governance review -The plan administrator should establish and document a process for the regular review of the pension plan's governance framework and processes.

[60] Financial Services Regulatory Authority of Ontario, Ontario Regulation 66/22, made under the *Pension Benefits Act,* (2022), Pension Update - February 14, 2022 | Financial Services Regulatory Authority of Ontario (fsrao.ca).

[61] See for example draft March 2022 Exposure Draft IFRS® Sustainability Disclosure Standard International Sustainability Standards Board [Draft] and IFRS S2, note 15.

The CCLI does agree with CAPSA's comment regarding minimum disclosures of how ESG factors are considered: the roles and responsibilities of the administrator or its agents in identifying and applying ESG considerations; the materiality and relevance of specific ESG considerations to the purposes of the plan; any material attribution of ESG considerations to the assessment of risk and performance results; and any stewardship activities undertaken.[62] We also agree that if a DC plan's investment line-up includes an 'ESG fund', the plan administrator should describe the rationale for the selection of the ESG fund, providing sufficient information for plan members to understand the risk/return characteristics of the fund.[63]

V. Conclusion

The primary purpose of a pension plan is to provide lifetime retirement income.[64] The CCLI agrees that the range of issues brought to light by ESG factors are constantly evolving, as are the methods and procedures for incorporating ESG factors into governance, risk management, and investment decision-making, and that practices should be responsive and regularly reviewed to assess emerging gaps, risks, and opportunities.[65] While we support CAPSA's efforts to develop guidance, it is disappointing that after a considerable period of deliberation, that the CAPSA Guideline does not align itself with developments internationally that are more targeted and ambitious. We believe that CAPSA's adoption of our five recommendations will help ensure that pension plan administrators and other pension fiduciaries are able to fulfill their fiduciary duties to plan members and beneficiaries.

CAPSA should also consider offering pension fiduciaries guidance that aligns with Canada's commitment to new types of partnership and collaboration with Indigenous peoples in business and finance, as illustrated by the *United Nations Declaration on the Rights of Indigenous Peoples Act* and recommendations of the Truth and Reconciliation Commission of Canada,[66] to embed effective governance mechanisms that will mitigate climate impacts and biodiversity loss in investment decisions, accounting for short-term, long-term and cumulative effects of human activities on the environment.[67]

Finally, we note that CAPSA asked for feedback on whether there should be an 'inclusive' Guideline on Risk Management to include ESG, Leverage and Cyber matters.[68] The CCLI agrees that an effective framework for managing risk will assist plan administrators in keeping plan assets safe and protecting the plan from adverse risks and that all these issues are important components of risk management. However, our view is that climate risk management is already too submerged in the current ESG Guideline and is likely to be

[62] Draft ESG Guideline, note 1 at 10.
[63] Draft ESG Guideline, note 1 at 10.
[64] Income Tax Regulations, subsection 8502(a) states that "the primary purpose of the plan is to provide periodic payments to individuals after retirement and until death in respect of their service as employees."
[6565] Draft ESG Guideline, note 1 at 5.
[66] *United Nations Declaration on the Rights of Indigenous Peoples Act,* SC 2021, c 14. See also Terri-Lynn William-Davidson and Janis Sarra, *Haida law of gina 'waadluxan gud ad kwaagiida and Indigenous rights in conservation finance* (CCLI: March 2021). This approach is echoed in. Call to Action 92 demands that the corporate sector use the UNDRIP framework and "apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources." It calls on the corporate sector to commit to "building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects." Canada, *Truth and Reconciliation Commission of Canada: Calls to Action*, (Winnipeg: Truth and Reconciliation Commission of Canada, 2015), online: *Truth and Reconciliation Commission*, <nctr.ca/assets/reports/Calls_to_Action_English2.pdf>. See also *Declaration on the Rights of Indigenous Peoples Act,* SBC 2019, c 44.
[67] Janis Sarra, *From Ideas to Action, Governance Paths to Net Zero* (Oxford University Press, 2020), chapters 5 and 6.
[68] 1908 (capsa-acor.org)

further lost under a combined guideline unless a more detailed set of climate-related requirements are issued, as we have discussed throughout this submission.

The CCLI appreciates the opportunity to comment on the draft Guideline, and we stand ready to assist CAPSA with any further research or policy development in the next stage of developing effective climate governance guidance. If you have any questions about our submission or wish to discuss any aspects of it, please do not hesitate to contact us.

Sincerely,

Janis Sarra

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