Canada's North Star in Climate Disclosure: Securities Regulators Must Align NI 51-107 with Global Developments

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Canada Climate Law Initiative L'Initiative canadienne de droit climatique

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TO:
Stan Magidson, Chair and CEO, Alberta Securities Commission
Yves Ouellet, président-directeur général de l'Autorité des marchés financiers
Grant Vingoe, CEO, Ontario Securities Commission
Brenda Leong, Chair and CEO, British Columbia Securities Commission,
Kevin Hoyt, CEO, Financial and Consumer Services Commission, New Brunswick
Roger Sobotkiewicz, Chair and CEO, Financial and Consumer Affairs Authority of Saskatchewan
David Cheop, Chair and CEO, Manitoba Securities Commission
Paul Radford, Chair, Nova Scotia Securities Commission
Fred Pretorius, Superintendent of Securities, Office of the Yukon Superintendent of Securities
Matthew Yap, Superintendent of Securities, Northwest Territories
Steve Dowling, Director, Financial and Consumer Services Division, Prince Edward Island
Office of the Superintendent of Securities Nunavut
Office of the Superintendent of Securities, Newfoundland and Labrador

Dear Sir/Madam,

Re: Urgent Need to Finalize and Bring into Force NI 51-107 Disclosure of Climate-related Matters

It has been well over two years since the Canadian Securities Administrators (CSA) proposed National Instrument 51-107 Disclosure of Climate-related Matters (NI 51-107) and its companion policy.[1] At that time, institutional investors with $21 trillion in assets under management urged the CSA to move swiftly to finalize NI 51-107 if Canada is to obtain its share of capital flows to sustainable finance.[2] The Canada Climate Law Initiative (CCLI)[3] made a submission strongly supporting a national instrument aligned with the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD), offering recommendations to strengthen its effectiveness.[4]

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[1] CSA, Consultation Climate-related Disclosure Update and CSA Notice and Request for Comment Proposed National Instrument 51-107 Disclosure of Climate-related Matters (October 2021).
[2] CCLI, *Summary of 131 submissions to CSA on proposed National Instrument 51-107 Disclosure of Climate-related Matters* (2022),
[3] 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 accounting and legal professions to publish guidance for audit committees. CCLI works with 70 Canadian Climate Governance Experts and 16 Affiliated Research Scholars from across Canada. CCLI is the Canadian partner of the global Commonwealth Climate and Law Initiative, founded at Oxford University, United Kingdom.
[4] CCLI submission, (January 2022), Canada-Climate-Law-Initiative-submission-to-CSA-on-Proposed-NI-51-107-January-16-2022.pdf (ubc.ca).

Since then, the world has moved forward exponentially on commitments to transition to net-zero greenhouse gas (GHG) emissions and effective governance and disclosure of climate-related financial risks and opportunities. Canada's failure to act has left Canadian issuers increasingly vulnerable to litigation and enforcement risk as they try, on an *ad hoc* basis, to craft disclosure that meets regulatory and civil liability materiality standards. Without clear requirements and guidance, the risk of litigation against issuers increases, as evident by the more than 2,300 climate litigation cases to date, 40% of which have been filed against corporations.[5]

We believe it is critically important to finalize NI 51-107 and bring it into force as soon as possible, given the urgent systemic financial risks that climate change poses. Investors need information to be able to make effective investment and engagement decisions. Issuers require guidance as to their disclosure obligations pursuant to securities law and such guidance will enhance the fairness of Canadian securities markets, helping issuers navigate the dynamic reporting landscape.

The CCLI's seven key recommendations in this submission will align NI 51-107 with the International Financial Reporting Standards (IFRS) Foundation International Sustainability Standards Board (ISSB) sustainability standards IFRS S2 Climate-related Disclosures (IFRS S2) and IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information (IFRS S1).[6] Finalized in June 2023, IFRS S2 represents the most universally-accepted provisions for climate-related financial disclosure globally, based on the TCFD framework and enhancing existing IFRS accounting standards.

We appreciate that the new Canadian Sustainability Standards Board (CSSB) has announced it will release its proposed Canadian Sustainability Disclosure Standards (CSDS) CSDS 1 and CSDS 2 in March 2024, adopting IFRS S1 and IFRS S2 entirely, with some accommodation in terms of timing and venture issuers.[7] It is critically important that the CSA align securities law disclosure with these standards if we are to attract and retain capital to Canadian markets. The CSA should work in tandem with the CSSB and expedite release of revised NI 51-107. Proceeding in a parallel process with CSSB and aligning consultation questions, rather than proceeding sequentially, recognizes: the urgency of the need for disclosure standards; that the constituencies for both consultations are similar; that issuers, investors, and other stakeholders should not have to expend unnecessary time and resources in duplicative consultation processes; and cooperation will ensure no inconsistencies in disclosure standards.

The CCLI's recommendations:

1. NI 51-107 should include an express objective of requiring issuers to disclose information about climate-related risks and opportunities that could reasonably be expected to affect the issuer's cash flows and access to finance or cost of capital over the short, medium or long term.[8]

[5] Joana Setzer and Catherine Higham, *Global trends in climate change litigation: 2023 snapshot* (Grantham Institute, LSE), Global_trends_in_climate_change_litigation_2023_snapshot.pdf (lse.ac.uk).
[6] IFRS S2, Sustainability Disclosure Standard, Climate-related Disclosures (June 2023, in force effective 1 January 2024) (IFRS S2 Climate-related Disclosures) and IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information* (IFRS S1)((June 2023, in force effective 1 January 2024) (IFRS S1). The provisions in IFRS S1 apply broadly to all sustainability-related financial disclosures, including climate-related disclosures; IFRS S1.21.
[7] Remarks of CSSB Chair Charles-Antoine St-Jean, at TMX Group "Ring the Bell for Climate" (December 2023); and Chair's remarks (28 January 2024), on file with author. Canadian Sustainability Disclosure Standards (CSDS) CSDS 1 on sustainability and CSDS 2 on climate-related disclosure. The consultation period is to run from 13 March 2024 to 10 June 2024.
[8] IFRS S2 Climate-related Disclosures, note 6, para 2.

2. NI 51-107 should adopt the IFRS ISSB framework for required disclosure by issuers of climate-related financial risks and opportunities, including governance, strategy, risk management, financial position, financial performance, and cash flows, climate resilience, and the metrics and targets utilized in the disclosure.[9]

3. NI 51-107 should require disclosure of climate transition plans, setting out the issuer's emissions reduction targets and actions in its transition towards net-zero emissions, including measuring and reporting progress annually.

4. NI 51-107 should adopt a time-limited "safe harbour" from secondary market liability for disclosure of Scope 3 emissions and climate scenarios.

5. NI 51-107 should accommodate the diversity of issuers in the Canadian markets by adopting the IFRS S2 provision that an issuer "shall use all reasonable and supportable information that is available to the entity at the reporting date without undue cost or effort, including information about past events, current conditions, and forecasts of future conditions".[10] For disclosure of financial position, financial performance, and cash flows, NI 51-107 should consider adopting the IFRS S2 provision regarding using an approach that is commensurate with the skills, capabilities, and resources that are available to the issuer for preparing those disclosures.[11]

6. NI 51-107 should apply to venture issuers, with simplified requirements for reporting only governance and risk management in the first two years.

7. The CSA and its member commissions should endorse the Sustainable Finance Action Council's (SFAC) Green and Transition Finance Roadmap and co-operate as members of the proposed Taxonomy Council's Indigenous, Provincial, and Territorial Government Stakeholder Advisory Group in advising the Taxonomy Council on developing the Green and Transition Finance Taxonomy, including the chair of that Group participating as a member of the council.

We discuss each of these recommendations in turn.

Recommendation 1:

> **NI 51-107 should include an express objective of requiring issuers to disclose information about climate-related risks and opportunities that could reasonably be expected to affect the issuer's cash flows and access to finance or cost of capital over the short, medium or long term.**[12]

The objectives of IFRS S2 are investor focused: to enable users of an entity's general purpose financial reporting to assess the effects of climate risks and opportunities on enterprise value, to understand how the entity's business activities support its climate strategy, and to evaluate the entity's ability to adapt its business model and operations to significant climate risks and opportunities. IFRS S2 builds on the TCFD pillars of governance, strategy, risk management and the metrics and targets utilized for disclosure of information about climate-related risks and opportunities. It emphasizes interoperability as a key element to consider in adoption and implementation of IFRS S2 and its companion standard IFRS S1. This objective

[9] Specific proposals on these disclosures are included on pages 5 to 8 of this submission.
[10] IFRS S2 Climate-related Disclosures, note 6, para 11.
[11] IFRS S2 Climate-related Disclosures, note 6, para 18.
[12] IFRS S2 Climate-related Disclosures, note 6, para 2.

aligns with existing IFRS accounting standards, which apply to the vast majority of Canadian publicly-listed companies;[13] specifically, "information is material if omitting, misstating or obscuring it could reasonably be expected to influence the decisions that the primary users of general purpose financial statements make on the basis of those financial statements".[14] Information about a climate-related risk or opportunity may be material because of the nature or magnitude of that risk or opportunity, or both.

The objective also aligns with and clarifies the definition of materiality under Canadian securities law.[15] The purposes of Canadian securities laws are to provide protection to investors from unfair, improper or fraudulent practices; to foster fair, efficient, and competitive capital markets and confidence in capital markets; to foster capital formation; and to contribute to the stability of the financial system and the reduction of systemic risk.[16] These objectives are best met by aligning climate-related disclosure requirements with developments globally. The CCLI notes that our recommendations also align with the CSA's proposed goal of streamlining disclosure requirements and reducing the regulatory burden for public companies while maintaining strong investor protection.[17] Stan Magidson, Chair of CSA and Chair and CEO of the Alberta Securities Commission has stated:

> Climate-related disclosure standards that elicit consistent and comparable disclosure for investors and that support a comprehensive global baseline of sustainability disclosures are a priority for the CSA. . .We are working towards disclosure requirements that support the assessment of sustainability-related risks, reduce market fragmentation and contribute to efficient capital markets while considering the needs and capabilities of issuers of different sizes.[18]

The CSA can also draw on the federal Office of the Superintendent of Financial Institutions (OSFI) Guideline B-15 Climate Risk Management, which applies to more than 400 federally-regulated banks and insurance companies.[19] Guideline B-15 is directly relevant to federally-regulated financial institutions and will have a cascading effect across financial and capital markets. OSFI has noted that climate-related financial risk is a "transverse risk" across all four categories of business risk, financial resilience, operational resilience, and risk governance.[20] OSFI's recent assessment of readiness based on Guideline B-15 is that many of its regulated institutions are progressing gradually to embed climate risk management into their governance structures, frameworks, and processes, building resilience to climate-related risks; and that while many are in the early stages of quantifying climate-related risks, a majority feel they are prepared to report on most categories of the expected climate-related financial disclosures.[21] This assessment confirms that

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[13] As of 2023, Canadian GAAP for all publicly accountable enterprises is IFRS Accounting Standards, although regulators provide options for issuers filing in the United States to apply US GAAP and rate-regulated entities not filing in the US to apply US GAAP until 2027. IFRS® Standards-Canada; see also https://www.frascanada.ca/en/ifrsstandards and IFRS Practice Statement 2: *Making Materiality Judgements* (Practice Statement) provides companies with guidance on how to make materiality judgements when preparing their general purpose financial statements in accordance with IFRS Standards.

[14] IAS 1 Presentation of Financial Statements and IAS 8 Accounting Policies, Changes in Accounting Estimates and Errors.

[15] CSA, National Instrument NI 51-102 Continuous Disclosure Obligations, 51102-NI-July-25-2023.pdf (bcsc.bc.ca).

[16] See for example, s 1.1, Ontario *Securities Act*, RSO 1990, c S5, as amended; and s 275, Québec *Securities Act*, V-1.1, as amended.

[17] CSA, "Canadian securities regulators provide update on proposed amendments to continuous disclosure requirements" (3 October 2023), providing an update on proposed amendments in May 2021; Canadian securities regulators provide update on proposed amendments to continuous disclosure requirements - Canadian Securities Administrators (securities-administrators.ca).

[18] CSA, "Canadian securities regulators consider impact of international developments on proposed climate-related disclosure rule" (12 October 2022), Canadian securities regulators consider impact of international developments on proposed climate-related disclosure rule - Canadian Securities Administrators (securities-administrators.ca).

[19] Office of the Superintendent of Financial Services (OSFI), OSFI Guideline B-15 Climate Risk Management, (March 2023) Guideline B-15 - Climate Risk Management (osfi-bsif.gc.ca), Chapter 1, 1.

[20] OSFI Overall Risk Rating (ORR), effective April 2024.

[21] OSFI, "Guideline B-15 readiness self-assessment questionnaire: What we heard report" (29 January 2024).

clear guidance creates the impetus and momentum to manage and disclose climate-related risks and opportunities.

In Québec, l'Autorité des marchés financiers' (AMF) recognition of systemic financial risks in its draft Climate Risk Management Guideline is also an important acknowledgment that climate-related risks can significantly affect the safety and soundness of Québec-regulated financial institutions, in turn affecting the integrity of the Canadian financial system.[22] Importantly, the AMF draft guideline includes market conduct rules, including detailed expectations in respect of fair treatment of clients.[23]

As of January 2024, the IFRS Foundation reports that 24 regulators/standard setters have signed the declaration of support for IFRS S2, including 19 individual countries and three supranational bodies, comprising disclosure authority in 63 countries.[24] It reports that in Canada, 33 organizations headquartered in Canada and 13 multinational organizations with subsidiaries headquartered in Canada have endorsed IFRS S2. For example, the United Kingdom (UK) government has stated its support for the IFRS Sustainability Disclosure Standards and the Australian Government is in the process of implementing mandatory climate disclosures in annual financial statements based on IFRS S2.[25]

The International Organization of Securities Commissions (IOSCO) has determined that "the ISSB Standards are appropriate to serve as a global framework for capital markets to develop the use of sustainability-related financial information in both capital raising and trading and for the purpose of helping globally integrated financial markets accurately assess relevant sustainability risks and opportunities".[26]

Recommendation 2:

> **NI 51-107 should adopt the IFRS ISSB framework for required disclosure by issuers of climate-related financial risks and opportunities, including governance, strategy, risk management, financial position, financial performance, and cash flows, climate resilience, and the metrics and targets utilized in the disclosure.**

The ISSB has developed – in the public interest – standards for high-quality, comprehensive global sustainability disclosures focused on the needs of investors and financial markets.[27] As institutional investors, Canadian pension funds have endorsed the new standards.[28] Pension funds in Canada invest on

[22] AMF, Climate Risk Management Guideline (November 2023), Draft Climate Risk Management Guideline (lautorite.qc.ca) (hereafter AMF). AMF, Ligne directrice sur la gestion des risques liés aux changements climatiques, Projet de Ligne directrice sur la gestion des risques liés aux changements climatiques (lautorite.qc.ca). Canada also needs to demonstrate credibility and follow through on its Nationally Determined Contribution under the Paris Agreement to reduce emissions by 40-45% from 2005 levels by 2030; *Canadian Net-Zero Emissions Accountability Act*, effective 29 June 2021; Government of Canada, "2030 Emissions Reduction Plan: Clean Air, Strong Economy" 2030 Emissions Reduction Plan: Clean Air, Strong Economy - Canada.ca; Government of Canada, "Net-zero emissions by 2050", Net-zero emissions by 2050 - Canada.ca.

[23] AMF, note 22 at 9-11. See also CCLI's submission to AMF, (22 January 2024).

[24] IFRS, https://www.ifrs.org/ifrs-sustainability-disclosure-standards-around-the-world/cop28-declaration-of-support/further-statements-of-support/ .

[25] In both the Financial Report and Directors' Report; Australian Institute of Company Directors, Deloitte, and Minter Ellison, A director's guide to mandatory climate reporting (3 October 2023), directors-guide-to-mandatory-climate-reporting-web (aicd.com.au); Australian Government, Treasury, Climate-related financial disclosure Consultation paper, (June 2023), Climate-related financial disclosure - consultation paper (treasury.gov.au).

[26] International Organization of Securities Commissions, "Supervisory Practices to Address Greenwashing Final Report" (December 2023), at 3, FR12/23 Supervisory Practices to Address Greenwashing (iosco.org).

[27] Financial Stability Board, *Progress Report on Climate-related Disclosures: 2023 Report* (October 2023), at 4, Progress Report on Climate-related Disclosures: 2023 Report - Financial Stability Board (fsb.org) (FSB).

[28] Maple 11 Pension Funds, "Companies focused on long-term value must embrace new disclosure framework" (29 June 2023), 2023-06-29_CEO-statement-of-support-for-ISSB_ENGLISH.pdf (cppinvestments.com).

behalf of 6.7 million Canadians;[29] they are mandated to deliver long-term risk-adjusted returns that help support retirement benefits and thus the financial security of millions of people.[30] These investors set much of the Canadian market, and they stress that companies need to be transparent in their management of climate-related risks. If disclosure requirements are not fair or adequate for them to make sound investment decisions, they are likely to disadvantage retail investors even more.

Adoption of key requirements of IFRS S2 will facilitate a "level playing field" for all issuers through comparable and consistent disclosure, and reduce the costs associated with reporting to multiple disclosure frameworks. Modern economies, including Canada's, rely on the flow of international capital; more than a third of all financial transactions occur across borders and that number is growing.[31] The IFRS standards provide high-quality, internationally recognized accounting standards that bring transparency, accountability, and efficiency to financial markets.[32] A clear framework will reduce the risk of capital flowing out of Canada to jurisdictions where the rules are clear. IFRS S2 builds on and enhances the TCFD pillars. It identifies and offers disclosure guidance on key aspects of managing climate-related physical and transition risks and allows for proportionality in reporting of information based on the size and complexity of entities. The CCLI proposes that NI 51-107 could align with IFRS S2 by requiring disclosure under the following six categories:

Disclosure Relating to Climate-Related Financial Risks and Opportunities

The issuer is required to disclose information about its climate-related physical and transition risks and opportunities that are useful to primary users of the issuer's financial reports in making decisions relating to providing resources to the issuer, including:

1. ***Governance***

   The issuer must disclose the governance processes, controls, and procedures it uses to monitor, manage, and oversee climate-related risks and opportunities, including how and how often the board is informed about climate-related risks and opportunities and management's role in the governance processes, controls, and procedures; how directors assess climate-related risks and opportunities in decisions on major transactions and its risk management processes and related policies; how directors oversee the setting of targets related to climate-related risks and opportunities and monitor progress towards meeting those targets, including whether and how related performance metrics are included in mandates and remuneration policies of directors and officers; and the issuer's procedures used to monitor, manage, and oversee climate-related risks and opportunities.[33]

2. ***Strategy***

   The issuer must disclose information that enables investors to understand the issuer's strategy for managing climate-related risks and opportunities, including how the issuer has responded to, and plans to respond to, climate-related risks and opportunities in its strategic decision-making, including its strategy to achieve its climate-related targets; the current and anticipated effects of its climate-related risks and opportunities on the issuer's business model and value chain, including information about where in the business model

[29] Statistics Canada, "Pension plans in Canada, as of January 1, 2022", The Daily — Pension plans in Canada, as of January 1, 2022 (statcan.gc.ca).
[30] Maple 11 Pension Funds, note 28.
[31] FSB, note 27.
[32] FSB, note 27.
[33] Adapted from IFRS S2 Climate-related Disclosures, note 6, paras 5 to 7. By "adapted" CCLI means adopting the IFRS requirements that investors would most likely find material.

and value chain climate-related risks and opportunities are concentrated; the issuer's climate-related transition plan; current and anticipated direct and indirect mitigation and adaptation efforts (for example, changes in production processes or equipment, relocation of facilities, and changes in product specifications). The issuer must explain, for each climate-related risk it has identified, whether it considers the risk to be a physical risk or transition risk and disclose over which time horizons—short, medium or long term—the effects of each climate-related risk and opportunity that could reasonably be expected to occur; and explain how the entity defines 'short term', 'medium term' and 'long term' and how these definitions are linked to the planning horizons used for the issuer's strategic decision-making.[34]

3. ***Risk Management***

The issuer must disclose information about the processes and policies the issuer uses to identify, assess, manage, and monitor climate-related risks; how the issuer uses climate-related scenario analysis to inform its identification of climate-related risks; how it assesses and monitors the nature, likelihood, and magnitude of the effects of those risks and how it prioritizes climate-related risks relative to other types of risks; whether and how the issuer has changed the processes it uses compared with the previous reporting period; and the extent to which, and how, climate-related risk management is integrated into and informs overall risk management processes. The issuer must disclose information that enables investors to understand the current and anticipated effects of climate-related risks and opportunities on the issuer and its value chain, including a description of where risks are concentrated, such as geographically or by type of assets or facilities; its plans to manage risk by achieving any climate-related targets it has set and any targets it is required to meet by law or regulation; disclose changes to its business model and resource allocation to manage climate-related risks; and disclose current and anticipated mitigation and adaptation risk management efforts.[35]

4. ***Financial Position, Financial Performance, and Cash Flows***

The issuer must disclose the effects of climate-related risks and opportunities on the issuer's financial position, financial performance, and cash flows for the reporting period and how the issuer expects them to change over the short, medium, and long term, taking into consideration how climate-related risks and opportunities are included in financial planning. The issuer must disclose how the entity expects its financial performance, financial position, and cash flows to change, given its strategy to manage climate-related risks and opportunities (for example, increased revenue from products and services aligned with a lower-carbon economy; costs arising from physical damage to assets from climate events; and expenses associated with climate adaptation or mitigation).[36] In preparing disclosures about the anticipated financial effects of a climate-related risk or opportunity, the issuer shall use all reasonable and supportable information that is available to the entity at the reporting date without undue cost or effort. The issuer shall disclose quantitative and qualitative information about how climate-related risks and opportunities have affected its financial position, financial performance, and cash flows for the reporting period; the climate-related risks and opportunities for which there is a significant risk of a material adjustment to assets and liabilities reported in the related financial statements within the

[34] Adapted from IFRS S2 Climate-related Disclosures, note 6, paras 8 -12.
[35] Adapted from IFRS S2 Climate-related Disclosures, note 6, paras 13, 14, 33-36.
[36] Adapted from IFRS S2 Climate-related Disclosures, note 6, para 16.

next annual reporting period; how the issuer expects its financial position to change over the short, medium and long term, taking into consideration its investment plans, including plans for capital expenditure, major acquisitions and divestments, joint ventures, and its planned sources of funding to implement its strategy. In providing quantitative information, an entity may disclose a single amount or a range. [37]

5. ***Climate Resilience***
   The issuer shall disclose information on its climate resilience, including significant areas of uncertainty it has considered in its assessment of its climate resilience.[38] The issuer shall use climate-related scenario analysis to assess its climate resilience using an approach that is commensurate with the issuer's circumstances.[39] Disclosure of the issuer's assessment of its climate resilience as at the reporting date should enable investors to understand the implications, if any, of the entity's assessment and response in its strategy and business model; and the issuer's capacity to adjust or adapt its strategy and business model over the short, medium and long term, including the entity's existing financial resources to respond to the effects identified in the climate-related scenario analysis, its ability to redeploy existing assets, and the effect of the issuer's current and planned investments in climate-related mitigation, adaptation, and opportunities for climate resilience.[40]

6. ***Metrics and Targets***
   The issuer shall disclose targets it has set, and any targets it is required to meet by law or regulation, to mitigate or adapt to climate-related risks or take advantage of climate-related opportunities, including the objective of the target (for example, mitigation, adaptation or conformance with science-based initiatives); and metrics used to measure progress towards these targets.[41] The issuer shall disclose Scope 1, 2, and 3 GHG emissions; disclose the quantitative and qualitative climate-related targets it has set to monitor progress towards achieving its strategic goals, including the process and metrics used to set the target, the parts of the issuer to which the target applies, the period over which the target applies, the base period from which progress is measured, interim targets, and if the target is quantitative, whether it is an absolute target or an intensity target. The issuer shall disclose capital deployment—the amount of capital expenditure, financing or investment deployed towards climate-related risks and opportunities.[42] The issuer shall disclose how it plans to achieve and monitor progress, including the metrics used to monitor progress towards reaching each target and resources it is using or plans to use to achieve its targets.[43] Disclosure of climate-related metrics should be consistent with other information included in the issuer's financial filings.

The CSA, in adopting disclosures drawn from IFRS S2, will reduce duplication and ensure issuers are addressing the key aspects of managing and disclosing climate-related risks and opportunities using a global baseline of sustainable finance and governance disclosure. Larger and globally traded issuers will have to meet all the detailed requirements of IFRS S2, given the speed at which IFRS S2 is being adopted

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[37] Adapted from IFRS S2 Climate-related Disclosures, note 6, paras 15-21. Please see discussion below on proportionality in disclosure.
[38] Adapted from IFRS S2 Climate-related Disclosures, note 6, paras 22, 23, 29.
[39] Adapted from IFRS S2 Climate-related Disclosures, note 6, paras 22, B1-18.
[40] Issuers could draw further guidance from specific examples in IFRS S2 Climate-related Disclosures, note 6, paras 22, 23, 29, 32, and B18.
[41] Adapted from IFRS S2 Climate-related Disclosures, note 6, paras 27-37.
[42] Adapted from IFRS S2 Climate-related Disclosures, note 6, para 29.
[43] Adapted from IFRS S2 Climate-related Disclosures, note 6, paras 14, 33-36.

globally.[44] The above suggestions offer a more proportional set of requirements that align with the IFRS ISSB standards, but are not as detailed. The IFRS has issued guidance to assist entities in meeting climate-related financial disclosure requirements,[45] which Canadian issuers can benefit from in meeting NI 51-107 requirements.

The CSA has already welcomed the publication of the ISSB's first two sustainability disclosure standards, commending the ISSB for developing a global framework for investor-focused disclosure that is responsive to market demand for more consistent and comparable disclosures.[46] It has committed to collaborating with the CSSB with respect to the ISSB standards.

The CCLI's proposal creates flexibility for issuers to assess and disclose governance, strategy, risk management, financial position, financial performance, and cash flows, climate resilience, and metrics and targets. Directors and officers can still conclude, based on duly diligent and reasonable assessment, that they do not need a comprehensive strategy to manage climate-related risks and opportunities and disclose to the market the basis for and the methodology used to reach that conclusion. However, most issuers will be affected by climate-related risks. The Sustainability Accountability Standards Board (SASB) reported that climate change is material in nearly every industry of the 77 industries it monitors, and "because of this ubiquity, investors cannot diversify away from climate risk; instead, they must focus on managing it—and encouraging portfolio companies to manage it—in all its forms".[47] Given how ubiquitous the risks are across all sectors, only a minority of issuers would have nothing to report.

One consideration for the CSA in the timing to finalize NI 51-107 is whether Canadian issuers will face reasonable costs now or massive costs later. As former Bank of Canada Governor Mark Carney observed, climate change presents a tragedy of the horizon, in that most catastrophic effects will be felt beyond the traditional horizons of most directors and officers, imposing a cost in the future that has little direct impact on companies' performance today.[48] Risk management measures should be in place so that future generations and issuers themselves do not bear the costs of the lack of action now. Mandatory climate transition plan requirements will encourage issuers' directors and officers to reflect on both current risks and risks the issuer will be exposed to in the future, even if they are considered to be long-term, and to take action to mitigate or manage these risks. Mr. Carney has remarked that governments globally are implementing mandatory disclosure because experience with voluntary TCFD guidance revealed that corporate boards were not taking their climate-related responsibilities seriously.[49]

Climate Scenarios

Climate scenario testing is an important but nascent tool. Scenarios are not a prediction, but rather, are a tool that covers a range of possible future development of drivers of climate change and implications for the issuer. They have become a core risk management tool. Disclosure of scenario analysis helps investors evaluate the resilience of the issuer's business strategy in the face of various climate scenarios that could impose potentially different climate-related risks.

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[44] IFRS - FAQs (accessed 6 January 2024).

[45] See for example, IFRS ISSB, "Accompanying Guidance on IFRS S2 Climate-related Disclosures" (June 2023), ISSB-2023-B – Issued IFRS Standards.

[46] CSA, "Canadian Securities Administrators statement on proposed climate-related disclosure requirements" (5 July 2023), Canadian Securities Administrators statement on proposed climate-related disclosure requirements - Canadian Securities Administrators (securities-administrators.ca).

[47] Value Reporting Foundation, SASB Standards, "SASB Climate Risks Technical Bulletin 2021" (April 2021) at 5, Climate-Risk-Technical-Bulletin2021-042821.pdf (sasb.org).

[48] Mark Carney, "Breaking the tragedy of the horizon - climate change and financial stability", (29 September 2015), Speech by Mark Carney at Lloyd's of London, Tuesday 29 September 2015 (bankofengland.co.uk).

[49] Mark Carney, Remarks to the International Sustainability Standards Board Symposium (16 February 2023).

Investors and other stakeholders need to understand how an issuer measures and monitors its climate-related risks, including access to information on the targets and metrics used by the financial institution that will allow investors to better assess the institution's potential risk-adjusted returns, ability to meet its financial obligations, general exposure to climate-related risks, and progress in managing or adapting to climate change.[50] Carrying out climate scenario analysis over different time horizons will aid the issuer to assess the impact of climate risk factors on its risk profile, business strategy, and business model. There cannot be an effective business strategy and risk management plan without the issuer considering at least several plausible future situations and what the potential impacts could be; assessing the impact of physical and transition risks on its strategy and risk profile and the resiliency of its business model; identifying relevant climate-related risk factors, estimating exposures and potential losses; and identifying data quality, assumption, and methodology limitations.[51] The issuer should include regular climate scenario analyses in its stress testing to guide its strategic planning, risk management, and financial planning process.[52]

One option for the CSA would be to require issuers in Year 1 of reporting to disclose that scenario analysis is being undertaken, the methodologies used, and the key factors that have influenced the issuer's management of climate-related risks and opportunities. Even that basic level of disclosure will inform investors that efforts are being made to enhance risk management and strategic planning. In Year 2, once issuers have experience with increasingly standardized tools, issuers would be required to disclose information on outcomes of the scenarios. Here again, IFRS S2 offers clear guidance to issuers.

The CSA could also consider adopting OSFI's approach to climate scenario analysis. OSFI's Guideline B-15 Climate Risk Management states that in developing a Climate Transition Plan, federally-regulated financial institutions (FRFI) "should use climate scenario analysis to assess the impact of climate-related risks on its risk profile, business strategy, and business model".[53] It observes that "climate scenario analysis uses a hypothetical future state of the world to assess the impact of climate-related risks on a FRFI's operations", supporting strategic planning and enterprise risk management; assessing the impact of physical and transition risks on the FRFI's strategy and risk profile, and the resiliency of its business model; identifying relevant climate-related risk factors that can drive financial and non-financial risks, and estimating exposures and potential losses; identifying data, methodology, and assumption limitations; and informing the adequacy of the FRFI's risk management framework.[54]

OSFI states that when "undertaking climate scenario analyses, the FRFI should consider a range of plausible and relevant models and climate scenarios, over various time horizons (i.e., short-, medium-, and long-term), when climate-related risks can materialize and drive the FRFI's risks" and should consider climate scenarios that encompass both physical and transition risks, and the potential interplay between these two types of risks.[55] The FRFI should also understand the methodology and approaches used, including data and methodological limitations and assumptions.[56] OSFI is currently considering a

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[50] AMF, note 22 at 8.
[51] AMF, note 22 at 8.
[52] AMF, note 22 at 8.
[53] OSFI, Guideline B-15, note 19, Principle 4 at 6.
[54] OSFI, Guideline B-15, note 19 at 6.
[55] OSFI, Guideline B-15, note 19 at 6.
[56] OSFI, Guideline B-15, note 19 at 6. It also states "In addition to FRFIs' own internal climate scenario analysis to understand the resilience of their business model and strategy, FRFIs will be required to complete standardized climate scenario exercises and report their results to OSFI on a periodic basis. These exercises will enable OSFI to assess aggregate exposures to physical and transition risks and compare FRFI approaches to climate scenario analysis".

methodology for a standardized climate scenario exercise to encourage their supervised entities to design and develop the foundational infrastructures necessary to identify and quantify climate risk in their financial exposures in their future climate risk assessment exercises.[57] The Bank of Canada and OSFI released the results of their pilot testing of scenario analysis with six financial institutions, recommending that scenario analysis is a useful tool for identifying potential risks in an environment of considerable uncertainty.[58] The report offers a set of global climate transition scenarios to capture a range of risk outcomes that could be stressful to the Canadian economy and the financial system.

The TCFD recommends climate scenario analysis based on climate science, including a description of how climate scenario analysis influenced the determination of targets and broader strategy and risk management goals.[59] Such testing assists issuers in assessing the resilience of their strategies in respect of climate-related risks and opportunities, taking into consideration transition to a net-zero economy.

Publicly-available scenario guidance is already being developed internationally. The Intergovernmental Panel on Climate Change (IPCC) developed five illustrative climate scenarios, all of which indicate that temperatures are going to continue to rise for 20 years under even the lowest emissions scenarios.[60] The IPCC has developed education materials and webinars on the use of scenarios.[61] The Basel Committee on Banking Supervision has published guidance on scenario analysis and stress-testing methodologies for the financial sector.[62] The International Energy Association has issued scenarios designed to assess specific energy outcomes.[63]

It is important that the CSA encourage issuers to build capacity to undertake scenario analysis from the outset. The CSA could provide a valuable service by developing some simple baseline user-friendly scenarios or drawing on the guidance of the IPCC to assist issuers in getting started, publishing them through the forms issued to support NI 51-107. The CSA's guidance would enhance the usefulness, consistency, and comparability of scenario analysis and assist in controlling costs. Even qualitative transition scenario analysis has quantitative financial implications.[64]

That said, the CCLI would like to draw your attention to actuarial and other reports out of the UK, in which actuaries are expressing concern that some of the widely-embraced scenarios globally under-report risk and climate-related financial impacts over the long term.[65] For example, the UK Institute and Faculty of Actuaries reports that many climate-scenario models in financial services are significantly underestimating climate risk and that carbon budgets may be smaller than anticipated and risks may develop more

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[57] OSFI, Standardized Climate Scenario Exercise – Draft for consultation (16 October 2023), Standardized Climate Scenario Exercise – Draft for consultation - Office of the Superintendent of Financial Institutions (osfi-bsif.gc.ca).

[58] Bank of Canada and Office of the Superintendent of Financial Institutions, *Using Scenario Analysis to Assess Climate Transition Risk Final Report of the BoC-OSFI Climate Scenario Analysis Pilot* (January 2022), Using Scenario Analysis to Assess Climate Transition Risk (bankofcanada.ca).

[59] Taskforce on Climate-related Financial Disclosures (TCFD), *Task Force on Climate-related Financial Disclosures Guidance on Metrics, Targets, and Transition Plans* (October 2021), at 38-45, 2021-Metrics_Targets_Guidance-1.pdf (bbhub.io).

[60] Intergovernmental Panel on Climate Change, *Climate Change 2021,The Physical Science Basis* (IPCC, 2021), IPCC_AR6_WGI_SPM_final.pdf.

[61] See for example, IPCC Workshop on the Use of Scenarios in the Sixth Assessment Report and Subsequent Assessments (17 July 2023), IPCC Workshop on the Use of Scenarios in the Sixth Assessment Report and Subsequent Assessments — IPCC.

[62] Basel Committee on Banking Supervision, *Climate-related financial risks – measurement methodologies* (April 2021), Climate-related financial risks - measurement methodologies (bis.org).

[63] IEA, "World Energy Outlook 2021 Four Scenarios" (2021), Understanding WEO Scenarios – World Energy Model – Analysis - IEA.

[64] For example, in assessing the carbon risks and opportunities of a real estate portfolio, the fact that the grid composition is less green/more green will subject those assets to lesser/greater carbon risk and carbon pricing, depending on their location.

[65] See, for example, UK Institute and Faculty of Actuaries, *Emperor's New Climate Scenarios – a warning for financial services,* (July 2023); The Pensions Regulator, United Kingdom, "How trustees can help make climate scenario analysis 'decision-useful (29 August 2023), "How trustees can help make climate scenario analysis 'decision-useful.

quickly.[66] It cautions that regulatory scenarios introduce consistency but also the risk of "group think", with scenario analysis outcomes being taken too literally and out of context.[67] The Institute and Faculty of Actuaries observes that:

> Time is too short to wait for models that are perfect. Development is needed, including looking beyond the commonly used general equilibrium economic models that underpin many approaches today, to find solutions that can realistically capture risk drivers and the interaction between policy, technology, the real economy and markets. A practical fix is to use qualitative scenarios that reflect the emerging reality of climate change to complement models, as well as out-of-model adjustments and margins to reflect uncertainty.[68]

Similarly, the UK Pensions Regulator has expressed concern over the integrity of some climate scenarios that appear to seriously underestimate the financial risk from climate change and are at odds with the established earth and climate science.[69] The UK Pensions Regulator concludes that despite the limitations, climate scenario analysis has provided useful initial training and insights, but it has tended to downplay the full scope of the risks and uncertainties.[70] It recommends that fiduciaries regularly review the climate-related capabilities of service providers and consider the need for additional specialist input; need to be able to understand the narratives and assumptions underlying their climate scenarios and the limitations of those scenarios so that they can broadly rationalize the outputs from those scenarios; and need to consider with advisers the use of stress testing and tail risk analysis to complement their climate scenario input to investment strategy decision-making.[71] It reports that the challenge is to ensure the models used and the scenario analysis address a fuller range of real-world risks and uncertainties.

Forward-looking Information

The CCLI's view is that the current provisions in National Instrument 51-102 Continuous Disclosure Obligations (NI 51-102) regarding forward-looking information are appropriate to cover climate-related disclosure.[72] Specifically, a reporting issuer must not disclose forward-looking information unless the issuer has a reasonable basis for the forward-looking information.[73] A reporting issuer that discloses material forward-looking information must include disclosure that identifies forward-looking information as such; cautions users that actual results may vary from the forward-looking information and identifies material risk factors that could cause actual results to differ materially from the forward-looking

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[66] Institute and Faculty of Actuaries, note 65 at 6.
[67] Institute and Faculty of Actuaries, note 65 at 6.
[68] Institute and Faculty of Actuaries, note 65 at 7.
[69] The Pensions Regulator, United Kingdom, note 65.
[70] The Pensions Regulator, United Kingdom, note 65.
[71] The Pensions Regulator, United Kingdom, note 65. A report titled Global Tipping Points led by University of Exeter's Global Systems Institute with the support of more than 200 researchers from over 90 organizations in 26 countries reported in 2023 that "harmful tipping points in the natural world pose some of the gravest threats faced by humanity. Their triggering will severely damage our planet's life-support systems and threaten the stability of our societies." It identifies crucial knowledge gaps in tipping system interactions that should be resolved in order to improve risk assessments of cascading transitions under future climate change scenarios, University of Exeter Global Systems Institute, The Global Tipping Points Report and Global Tipping Points | Home (global-tipping-points.org).
[72] CSA, NI 51-102, note 15. Section 1.1 states ""forward-looking information" means disclosure regarding possible events, conditions or financial performance that is based on assumptions about future economic conditions and courses of action and includes future-oriented financial information with respect to prospective financial performance, financial position or cash flows that is presented as a forecast or a projection;" "FOFI", or "future-oriented financial information", means forward-looking information about prospective financial performance, financial position or cash flows, based on assumptions about future economic conditions and courses of action, and presented in the format of a historical statement of financial position, statement of comprehensive income or statement of cash flows;" "financial outlook" means forward-looking information about prospective financial performance, financial position or cash flows that is based on assumptions about future economic conditions and courses of action and that is not presented in the format of a historical statement of financial position, statement of comprehensive income or statement of cash flows;
[73] NI 51-102, note 15, Part 4A.2.

information; states the material factors or assumptions used to develop forward-looking information; and describes the reporting issuer's policy for updating forward-looking information.[74] NI 51-102 also sets requirements for updating or withdrawing previously disclosed forward-looking information.[75] If the CSA defines scenario analysis as forward-looking information, these requirements and safeguards should be effective for duly diligent and good faith disclosures.[76]

Recommendation 3:

> **NI 51-107 should require disclosure of climate transition plans, setting out the issuer's emissions reduction targets and actions in its transition towards net-zero emissions, including measuring and reporting progress annually.**

Although climate transition plans are referenced in the mandatory disclosure in recommendation 2, they warrant special mention as they were not included in the CSA's original draft instrument. Since the CSA released its draft, many countries and the ISSB have recommended mandatory climate transition plans. IFRS S2 states: "A climate-related transition plan is an aspect of an entity's overall strategy that lays out the entity's targets, actions or resources for its transition towards a lower-carbon economy, including actions such as reducing its greenhouse gas emissions."[77]

OSFI's Guideline B-15 Climate Risk Management requires financial institutions to develop and implement a Climate Transition Plan in line with the institution's business plan and strategy, which guides the management of increasing physical risks from climate change and the transition towards a low-GHG economy.[78] The AMF Climate Risk Management Guideline mirrors this requirement.[79]

The Financial Stability Board and TCFD recommend transition plans as an important component of an issuer's strategy to address its climate-related risks and opportunities.[80] The TCFD recommends that issuers adopt science-based transition plans, its guidance offering accessible, clear factors to consider in disclosing science-based interim targets and how progress is being measured against these goals.[81]

Transition plans set out specific initiatives and actions supporting the issuer's transition towards net-zero emissions. Given the urgency of climate-related financial risk and the need for significant transition this decade, NI 51-107 should require issuers to develop climate transition plans, including disclosure of interim and final targets towards net-zero emissions, annual progress in meeting targets, and information on how the issuer intends to deliver on its targets. Disclosure of transition plans will allow users of financial statements to evaluate the issuer's progress towards targets over time.

With approximately 92% of the world's economy (by gross domestic product (GDP)) now covered by a net-zero target,[82] having transparency on issuer transition plans to net-zero emissions should be a primary purpose of NI 51-107 in order to enhance access to capital, allow issuers to become competitive in global

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[74] NI 51-102, note 15, Part 4A.3.
[75] NI 51-102, note 15, Part 5.8.
[76] We note that to date, Australia has rejected a safe harbour for forward-looking statements, concluding that it would likely lengthen and reduce the readability of disclosures without providing decision-useful information, and using a disclaimer to absolve the entity of any liability associated with a forward-looking statement may undermine the quality of disclosures; Treasury, Australian Government, "Climate-related financial disclosure consultation paper" (June 2023), at 28, Climate-related financial disclosure - consultation paper (treasury.gov.au).
[77] IFRS S2, note 6.
[78] OSFI, B-15 Climate Risk Management, note 19, Chapter 1, 1.
[79] AMF, note 22.
[80] Financial Stability Board, *Task Force on Climate-Related Financial Disclosures Guidance on Metrics, Targets, and Transition Plans.*
[81] TCFD Guidance, note 59 at 39.
[82] Net Zero Climate, 'Global Net Zero Progress' (2022), Progress Tracking - Net Zero Climate, Tracking Net Zero Progress (netzeroclimate.org).

capital markets, and make meaningful progress in Canada's commitment to transition to a net-zero circular economy. The UK government has strengthened existing sustainability reporting requirements for companies, including required publication of climate transition plans,[83] stating that a climate transition plan is integral to a company's overall business strategy.[84] In October 2023, its Transition Plan Taskforce (TPT) finalized its sector-neutral disclosure framework based on IFRS S2.[85] Its disclosure framework offers helpful guidance on what a good practice climate transition plan should cover, based on the latest scientific findings about climate change and reflecting the urgency to act.[86] The TPT recommends that issuers and other entities consider three inter-related channels in designing their transition plan— decarbonizing; responding to climate-related risks and opportunities, and contributing to an economy-wide transition; and disclosing whether and how it has identified, assessed, and taken into account the impacts and dependencies of the transition plan on the entity's stakeholders, society, the economy, and the natural environment throughout its value chain that may give rise to sustainability-related risks and opportunities.[87]

The European Union (EU) requires transition plans for all companies subject to its Corporate Sustainability Reporting Directive (CSRD), including describing how the plan fits with the company's business model and strategy and progress on the plan.[88] IFRS S2 Climate-related Disclosures also requires disclosure of transition planning. The Glasgow Financial Alliance for Net Zero (GFANZ) has published a globally consistent approach to real-economy company transition planning[89] and financial institution transition planning,[90] identifying the key elements a climate transition plan needs in order to be credible and comprehensive, as well as tools to support the development, creation, and implementation of a company's net-zero transition plan.

The CCLI accepts that a short period may be necessary to allow issuers to acquire the expertise to report Scope 3 emissions. We appreciate that Scope 3 emissions are initially more difficult to measure and will require issuers to seek emissions reporting from their suppliers and other companies in their value chain. However, mandating the disclosure now for all issuers will be an aid to issuers identifying Scope 3 emissions because suppliers that are issuers will also be reporting their emissions and because issuers will be able to rely on the reporting mandate to embed emissions reporting in their supply and service contracts across the value chain. Securities law developments in the UK, Australia, Japan, the EU, and other countries are all including Scope 1, 2, and 3 emissions reporting, and if our capital markets are to be competitive, regulation must not lag developments internationally. Canadian companies with activities in

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[83] UK, Transition Plan Taskforce (TPT), *Disclosure Framework* (October 2023), TPT_Disclosure-framework-2023.pdf (transitiontaskforce.net)
[84] UK Government Transition Plan Taskforce, "The Transition Plan Taskforce Disclosure Framework" (November 2022), TPT-Disclosure-Framework.pdf (transitiontaskforce.net).
[85] Kris Cooper, "IFRS S1 & IFRS S2: a global baseline of financial sustainability reporting?" (7 November 2023), IFRS S1 & IFRS S2: a global baseline of financial sustainability reporting? - The Accountant (theaccountant-online.com).
[86] UK, Transition Plan Taskforce, note 83 at 16, 38.
[87] UK, Transition Plan Taskforce, note 83 at 16.
[88] European Union (EU), Corporate Sustainability Reporting Directive - Directive (EU) 2022/2464, Amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU (in force January 2023), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2464&from=EN (CSRD). See also (EU) 2023/1425 (27 June 2023) on facilitating finance for the transition to a sustainable economy.
[89] GFANZ, *Scaling Transition Finance and Real-economy Decarbonization, Supplement to the 2022 Net-zero Transition Plans report* (December 2023), Transition-Finance-and-Real-Economy-Decarbonization-December-2023.pdf (bbhub.io). Glasgow Financial Alliance for Net Zero is a global network of financial sector-specific alliances committed to support the global economy's transition to net-zero by 2050, representing more than 650 institutions across the financial sector, spanning 50 countries and representing 40% of global private financial assets.
[90] GFANZ, *Financial Institution Net-zero Transition Plans Fundamentals, Recommendations, and Guidance, Final Report* (November 2022), Recommendations-and-Guidance-on-Financial-Institution-Net-zero-Transition-Plans-November-2022.pdf (bbhub.io).

Europe are already now affected by the EU CSRD, which will require approximately 1,300 Canadian companies to make and independently verify a number of sustainability disclosures.[91]

California has enacted two climate-related disclosure bills for large companies, partnerships, and other public and private entities: SB-253 *Climate Corporate Data Accountability Act*[92] and SB-261 *Greenhouse Gases: Climate-related Financial Risk Act*.[93] California has a GDP similar to that of all of Canada – in 2022, Canada's GDP was 2.14 trillion USD and California's GDP was 2.89 trillion USD dollars.[94]

SB-253 *Climate Corporate Data Accountability Act* requires adoption by 1 January 2025 of regulations requiring specified partnerships, corporations, limited liability companies, and other business entities that do business in California ("reporting entities")[95] to publicly disclose their Scope 1 and 2 GHG emissions, and starting in 2027, annually report their Scope 3 GHG emissions.[96] It requires a reporting entity to obtain assurance performed by an independent third-party assurance provider of the entity's public disclosure.[97] Beginning in 2026, a reporting entity must measure and report its GHG emissions in conformance with the Greenhouse Gas Protocol standards and guidance, including the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard and the Greenhouse Gas Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard developed by the World Resources Institute and the World Business Council for Sustainable Development.[98]

SB-261 *Greenhouse Gases: Climate-related Financial Risk Act* requires "covered entities",[99] including issuers with revenue of 500 million USD, to prepare a climate-related financial risk report disclosing the entity's climate-related financial risk and measures adopted to reduce and adapt to climate-related financial risk, on or before 1 January 2026 and biennially thereafter.[100] SB-261 requires the entity to make a copy of the report available to the public on its own website.[101] The California Bills illustrate that US states are not waiting for the US Securities and Exchange Commission (SEC) to finalize its rule before requiring large entities to report on their emissions.

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[91] Dieter Holger, "At Least 10,000 Foreign Companies to Be Hit by EU Sustainability Rules", *The Wall Street Journal* (5 April 2023). There is no breakdown of companies by issuing or privately-held.

[92] SB-253, the *Climate Corporate Data Accountability Act,* Bill Text - SB-253 Climate Corporate Data Accountability Act. (ca.gov)

[93] SB-261 *Greenhouse Gases: Climate-related Financial Risk Act*, Bill Text - SB-261 Greenhouse gases: climate-related financial risk. (ca.gov).

[94] World Bank National Accounts Data, GDP (current US$) - Canada | Data (worldbank.org) and Statista Research Department, (3 November 2023), Real GDP California U.S. 2022 | Statista.

[95] Covered entities are defined as entities with total annual revenues in excess of 1,000,000,000 USD, SB-253, note 92.

[96] SB-253, note 92, s 2.

[97] SB-253, note 92, s 2. A reporting entity is to obtain an assurance engagement, performed by an independent third-party assurance provider, of their public disclosure. The reporting entity shall ensure that a copy of the complete assurance provider's report on the GHG emissions inventory, including the name of the third-party assurance provider, is provided to the emissions reporting organization as part of or in connection with the reporting entity's public disclosure. "The assurance engagement for scope 1 emissions and scope 2 emissions shall be performed at a limited assurance level beginning in 2026 and at a reasonable assurance level beginning in 2030."

[98] Including World Resources Institute and the World Business Council for Sustainable Development guidance for Scope 3 emissions calculations that detail acceptable use of both primary and secondary data sources, including the use of industry average data, proxy data, and other generic data in its scope 3 emissions calculations; SB-253, note 92, s 2.

[99] SB-261, note 93, s 2(b). ""Covered entity" means a corporation, partnership, limited liability company, or other business entity formed under the laws of the state, the laws of any other state of the United States or the District of Columbia, or under an act of the Congress of the United States with total annual revenues in excess of five hundred million United States dollars ($500,000,000) and that does business in California. Applicability shall be determined based on the business entity's revenue for the prior fiscal year. "Covered entity" does not include a business entity that is subject to regulation by the Department of Insurance in this state, or that is in the business of insurance in any other state"; SB-261, note 93, s 2(a).

[100] Administrative penalties for failure to comply can be $50,000 in a reporting year; SB-261, note 93.

[101] SB-261, note 93 will "require covered entities to pay an annual fee for the state board's actual and reasonable costs to administer and implement the bill. The bill would create the Climate-Related Financial Risk Disclosure Fund, require the proceeds of the fees to be deposited in the fund, and continuously appropriate the moneys in the fund to the state board for purposes of the bill."

Recommendation 4:

> **NI 51-107 should adopt a time-limited "safe harbour" from secondary market civil liability for disclosure of Scope 3 emissions and climate scenarios.**

Scope 3 emissions safe harbour while maintaining the flexibility of the regulator's authority

Given that it will take some time to obtain fully accurate information on Scope 3 emissions in an issuer's value chain, a safe harbour may alleviate concerns that issuers have about civil liability for information largely derived from third parties. Generally, the issuer's obligation is to provide full, true, and plain disclosure of all material facts; and securities law invokes liability for misrepresentation (including omissions) in continuous disclosure documents. The remedies available to investors under securities legislation for misrepresentation are in addition to remedies available to them at common law.[102] These statutory remedies contribute to investor confidence and the integrity of the market. The challenge is to balance the availability of these remedies with the ability of issuers to develop capacity to give full, true, and plain disclosure of Scope 3 emissions. One option is to offer a time-limited safe harbour from civil liability for Scope 3 emissions disclosure, two or three years at most, so that issuers can work diligently, reasonably, and on a timely basis towards accurate disclosure. A safe harbour for Scope 3 emissions disclosure in NI 51-107 would create a time-limited period in which directors and officers need not worry about investors commencing civil lawsuits against the issuer or its directors or officers.[103]

The approach to regulatory enforcement is different. Securities regulators must retain their ability to enforce the legislation and national instruments; however, they could signal that for a time-limited period they will work with directors and officers of issuers that are acting diligently and in good faith to meet the Scope 3 disclosure requirements of NI 51-107. Securities regulators can adopt an outcomes-based regulatory approach, signalling that in the first two years, regulators will advise issuers where they are not in compliance with NI 51-107 and then monitor their efforts to comply. This approach would not be protection from regulatory sanction for misrepresentation, fraudulent or bad faith conduct, but does recognize that there is a continuum of regulatory and enforcement strategies that encourage transparency in disclosure and recognize the evolving nature of Scope 3 emissions data collection.

Where disclosure of Scope 3 emissions is not possible, the CSA should require the issuer to disclose the efforts made to obtain the information about its value chain, the reasons why that information could not be obtained, and the issuer's plan to obtain such information in the future. This accommodation aligns with IFRS S2. It is also the approach taken in the EU, which has included a three-year grace period in the

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[102] M Condon, A Anand, J Sarra, and S Bradley, *Securities Law in Canada* (3rd ed) Emond Montgomery 2017, chapter 10. There are limited defences under securities law, such as due diligence and reliance on an expert, as well as under corporate law. Under corporate law, directors and officers have a defence from personal liability if, in acting in the best interests of the corporation (issuer), they have exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances, including good faith reliance on financial statements of the corporation represented to the director by an officer or auditor of the corporation or a report of a person whose profession lends credibility to a statement made by the professional person; see for example, s 122, *Canada Business Corporations Act,* RSC, 1985, c C-44 and ss 134, 135, Ontario *Business Corporations Act,* RSO 1990, c B16.

[103] For example, the proposed SEC disclosure rule specifies that the safe harbour would provide that disclosure of Scope 3 emissions by or on behalf of the registrant (issuer) would be deemed not to be a fraudulent statement unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith; SEC Proposed Rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors, 45, https://www.sec.gov/files/rules/proposed/2022/33-11042.pdf at 211, citing proposed 17 CFR 229.1504(f)(1), "the term "fraudulent statement" would be defined to mean a statement that is an untrue statement of material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or that constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud as those terms are used in the Securities Act or the Exchange Act or the rules or regulations promulgated thereunder", proposed 17 CFR 229.1504(f)(3).

CSRD specifically for value chain disclosures.[104] It states that "for the first three years of the application of the measures to be adopted by the Member States in accordance with this amending Directive, in the event that not all the necessary information regarding the value chain is available, the undertaking should explain the efforts made to obtain the information about its value chain, the reasons why that information could not be obtained, and the plans of the undertaking to obtain such information in the future."[105]

The Australian Government proposes to introduce civil penalty provisions into the *Corporations Act,* so that a failure to disclose, or inadequate disclosure, would attract a civil penalty; it also proposes that enforcement for misleading or deceptive conduct or similar claims in respect of Scope 3 emissions disclosures and select forward-looking disclosures (being scenario analysis and transition planning) will be limited to regulator-only action for a fixed period of three years.[106]

Scenario analysis safe harbour while maintaining the flexibility of the regulator's authority

The CCLI's view is NI 51-107 should require climate scenario analysis to commence now, but disclosure phased in as discussed above, and the results of such disclosure should be protected from secondary market civil liability for a limited period, ideally two to three years only. Here again, regulators could work with issuers to ensure transparency and compliance, but still have the discretion to give administrative sanctions for non-compliance due to failure to act diligently and in good faith, or for misrepresentation or fraud, allowing a short period for issuers to correct initial scenario analysis that proves not to be useful to investors.

Recommendation 5:

> **NI 51-107 should accommodate the diversity of issuers in the Canadian markets by adopting the IFRS S2 provision that an issuer "shall use all reasonable and supportable information that is available to the entity at the reporting date without undue cost or effort, including information about past events, current conditions, and forecasts of future conditions". For disclosure of financial position, financial performance, and cash flows, NI 51-107 should consider adopting the IFRS S2 provision regarding using an approach that is commensurate with the skills, capabilities, and resources that are available to the issuer for preparing those disclosures**.

As noted in recommendation 2 above, IFRS S2 contains provisions that are aimed at proportionality. Issuers and other entities must report on governance, strategy, risk management, financial position, financial performance, and cash flows, climate resilience, and the metrics and targets utilized in the disclosure, but an accommodation is that: "In identifying the climate-related risks and opportunities that could reasonably be expected to affect an entity's prospects, the entity shall use all reasonable and supportable information that is available to the entity at the reporting date without undue cost or effort, including information about past events, current conditions and forecasts of future conditions."[107]

Similarly, under paragraph 18 of "financial position, financial performance and cash flows", IFRS S2 specifies that "in preparing disclosures about the anticipated financial effects of a climate-related risk or opportunity, an entity shall: (a) use all reasonable and supportable information that is available to the

[104] EU, CSRD, note 88. See also Deloitte, "Frequently Asked Questions About the E.U. Corporate Sustainability Reporting Directive" (17 August 2023) Heads Up — #DeloitteESGNow — Frequently Asked Questions About the E.U. Corporate Sustainability Reporting Directive (August 17, 2023) | DART – Deloitte Accounting Research Tool.
[105] CSRD, note 88, L 322/44 at para 34.
[106] Australian Institute of Company Directors, Deloitte, and Minter Ellison, A director's guide to mandatory climate reporting, 3 October 2023, directors-guide-to-mandatory-climate-reporting-web (aicd.com.au); Australian Government, Treasury, Climate-related financial disclosure Consultation paper, (June 2023), Climate-related financial disclosure - consultation paper (treasury.gov.au).
[107] IFRS S2 Climate-related Disclosures, note 6, para 11.

entity at the reporting date without undue cost or effort; and (b) use an approach that is commensurate with the skills, capabilities and resources that are available to the entity for preparing those disclosures."[108]

There are further proportionality provisions that accommodate smaller issuers. An entity need not provide quantitative information about the current or anticipated financial effects of a climate-related risk or opportunity if it determines that those effects are not separately identifiable; or the level of measurement uncertainty involved in estimating those effects is so high that the resulting quantitative information would not be useful.[109] Moreover, it specifies that "an entity need not provide quantitative information about the anticipated financial effects of a climate-related risk or opportunity if the entity does not have the skills, capabilities or resources to provide that quantitative information.[110] If relying on either of these provisions, the entity must explain why it has not provided quantitative information; and provide qualitative information about those financial effects, including identifying line items, totals and subtotals within the related financial statements that are likely to be affected, or have been affected, by that climate-related risk or opportunity; and provide quantitative information about the combined financial effects of that climate-related risk or opportunity with other climate-related risks or opportunities and other factors unless the entity determines that quantitative information about the combined financial effects would not be useful.[111]

The CSA can provide user-friendly guidance to issuers as to how to assess "reasonable and supportable" and "undue cost and effort", drawing on the considerable guidance already given by the IFRS. The IFRS Foundation notes that the requirement to use 'all reasonable and supportable information that is available without undue cost or effort' is designed to ease concerns around the need for flawless data and is intended to support preparers in dealing with measurement uncertainty and to scale the requirements in IFRS S2 and IFRS S1.[112] For companies with fewer resources, small companies, and companies new to sustainability reporting, the IFRS ISSB guidance states that information has to be reasonable and supportable, in other words, "the company can neither ignore nor fabricate information that would inform its disclosure"; and information must be available without undue cost or effort, the IFRS ISSB stating that an exhaustive effort to obtain, develop or analyze information is unnecessary.[113] It states that reasonable and supportable information is specific to the company; takes account of general conditions in the external environment; and includes information about past events, current conditions, and forecasts of future conditions.[114]

The IFRS Foundation observes that "undue cost or effort" applies, for example, to information used by a company when preparing its financial statements, operating its business model, setting its strategy, and managing its risks and opportunities that is available without undertaking an exhaustive search.[115] Primary users' information needs and the costs and efforts for the company should be balanced.[116] It states that the assessment of what constitutes undue cost or effort can change over time as circumstances change; and as much as possible, an issuer should use consistent data and make consistent assumptions when preparing sustainability-related financial information.[117]

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[108] IFRS S2 Climate-related Disclosures, note 6, para 18.
[109] IFRS S2 Climate-related Disclosures, note 6, para 19.
[110] IFRS S2 Climate-related Disclosures, note 6, para 20.
[111] IFRS S2 Climate-related Disclosures, note 6, para 21.
[112] IFRS, https://www.ifrs.org/sustainability/knowledge-hub/faqs/.
[113] IFRS, note 112.
[114] IFRS, note 112.
[115] IFRS, note 112.
[116] IFRS, note 112.
[117] IFRS, note 112, referencing IFRS S1.B6–10 and IFRS S1.BC8–17.

Our view is that this guidance offers a reasonable approach to proportionality that would accommodate the diversity of issuers in Canada.

Recommendation 6:

> **NI 51-107 should apply to venture issuers, with simplified requirements for reporting governance and risk management in the first two years.**

Venture issuers are important to the Canadian economy as they allow innovation and entrepreneurship that foster and offer some of our greatest opportunities for developing new sustainable technology, products, and services. Thus, while we need an entire economy approach to disclosure of climate-related risks and opportunities, we also need to carefully consider what is reasonable for early stage venture issuers.

Ideally, the recommendations above should apply to venture issuers, given the strength of the IFRS S2 proportionality provisions discussed in recommendation 5 above with respect to only requiring disclosure commensurate with the issuer's skills, capabilities, and resources that are available for preparing those disclosures. NI 51-107 could include venture issuers with accommodation on the requirements. It is important to remember that there is a range in size, sophistication, and resources of venture issuers and a number are more than capable of meeting securities disclosure standards. For example, 15% of TSXV issuers by market cap have over 50 million CAD.[118] A simple delineation of venture/non-venture issuer requirements may skew incentives in respect of disclosure and listing. Securities law continuous disclosure requirements already distinguish some venture issuers from others, such as the disclosure requirements for venture issuers that have not had significant revenue from operations; and offer disclosure guidance based on size of venture issuers, such as in respect of providing quarterly disclosure.[119]

The CCLI's view is that the proportionality and accommodation provisions in IFRS S2 and recommended above assist greatly in accommodating venture issuers. However, given the urgency of the need for securities law regulation, our view is that if the CSA members cannot reach consensus on requirements for venture issuers, the CSA should proceed now to regulate climate-related disclosure for all non-venture issuers, and then determine the venture issuer requirements as soon as possible thereafter. Here again, working closely with the CSSB could facilitate these decisions.

At minimum, venture issuers should be required to disclose climate-related governance and risk management practices at the same time as all issuers. The Canadian Coalition for Good Governance (CCGG), comprised of Canadian institutional investors that together manage $5 trillion in assets, has observed that an approach that exempts venture issuers from any disclosure for several years creates too long of a gap where no information from this group is mandated to be made available to investors.[120] CCGG recommends that governance and risk management disclosures should be required from venture issuers within one year of the effective date with the effect that all issuers would be disclosing at the same time,

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[118] TMX Group, TSXV issuers by market cap (January 2024), on file with author.

[119] CSA, NI 51-102 Continuous Disclosure and Companion Policy 51-102CP Continuous Disclosure Obligations, s 5.6(2) "Although all venture issuers have the option of providing quarterly highlights, there are some instances where a venture issuer may want to consider providing full interim MD&A instead of quarterly highlights. We believe the option to use quarterly highlights will likely satisfy the needs of investors in smaller venture issuers. However, investors in larger venture issuers, including those with significant revenue, may want full interim MD&A to assist them in making informed investment decisions. Issuers will likely take the needs of their investors into consideration when determining whether to provide quarterly highlights or full interim MD&A."

[120] CCGG, "Re: CSA Consultation Climate-related Disclosure Update and CSA Notice and Request for Comment Proposed National Instrument 51-107 Disclosure of Climate-related Matters" (31 January 2022) at 14, Regulatory Submissions - CCGG.

as governance and risk management are foundational to boards integrating climate-related risks and opportunities into a company's business planning and are not contingent on materiality analysis; it then suggests that other disclosures should be gradually phased in for venture issuers.[121]

There is considerable experience in delineating requirements for venture issuers. One option would be to exclude venture issuers without cash flow or with less than a specified level of market cap and with limited emissions, except to report on governance and management of climate-related risks. Another option is to delineate timing and scope of disclosures by issuers using a combination of assets, revenues, and number of employees. There are examples of this approach in Canada and abroad.[122] One example is the EU, which requires small and medium-sized undertakings (SME) that are listed on EU regulated markets to disclose if they meet two of three criteria: balance sheet total of EUR 4 million (5.86 million CAD at January 2024), net turnover of EUR 8 million (11.72 million CAD), and/or an average of 50 employees during the financial year, with reporting due from 2027 for financial years starting on or after 1 January 2026, and an opt-out possible for SME until 2028.[123] Of TSXV issuers, 41.97% have a market cap of less than 5 million CAD,[124] so adoption of the EU threshold would likely exclude these venture issuers from disclosure requirements, (although the TSXV does not collect data such as employees, so the criteria may have to be refined).

In Canada, an example unrelated to climate disclosure is the statute under which entities must report on their measures to prevent and reduce the risk of forced labour or child labour in their supply chains,[125] with "entity" defined as a corporation or a trust, partnership or other unincorporated organization that is listed on a stock exchange in Canada; has a place of business in Canada, does business in Canada or has assets in Canada and that, based on its consolidated financial statements, meets at least two of the following conditions: has at least 20 million CAD in assets, has generated at least 40 million CAD in revenue, and employs an average of at least 250 employees; or as prescribed by regulations.[126] Such a criteria would exclude many small venture issuers; however, a company could have high GHG emissions and not fall into the criteria, so a specified level of emissions would also need to be included as criteria for disclosure.

Overall, it is important to consider proportionality for small venture issuers in timing and requirements, but equally, it is important that NI 51-107 not be delayed.

Recommendation 7:

The CSA and its member commissions should endorse the Sustainable Finance Action Council's (SFAC) Green and Transition Finance Roadmap[127] and co-operate as members of

[121] CCGG, note 120 at 14.

[122] See for example, UK *Large and Medium-Sized Companies and Groups (Accounts and Reports) Regulations 2008,* Schedule 7, 20C(2), https://www.legislation.gov.uk/uksi/2008/410/schedule/7/part/7 and UK *Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008,* s 415A(2), https://www.legislation.gov.uk/uksi/2008/1911/contents

[123] CSRD, note 88, Preamble, section 21, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2464. Large EU undertakings and EU parent undertakings of large groups that are not public-interest entities and must meet two of the following criteria (either as a single entity or on a group basis): balance sheet total of EUR 20 million; net turnover of EUR 40 million; and/or an average of 250 employees during the financial year, with reporting due from 2026 for financial years starting on or after 1 January 2025. See also European Commission, "Corporate sustainability reporting," 22 December 2023, https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en; European Sustainability Reporting Standards (ESRS), Disclosure Requirement E1-6, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202302772.

[124] TMX Group, note 118.

[125] For example, the Canada's *Fighting Against Forced Labour and Child Labour in Supply Chains Act,* Statutes of Canada 2023, c 9 (Royal Assent May 2023), Public Bill (Senate) S-211 (44-1) - Royal Assent - Fighting Against Forced Labour and Child Labour in Supply Chains Act - Parliament of Canada.

[126] Section 2(d), *Fighting Against Forced Labour and Child Labour in Supply Chains Act,* note 125.

[127] Sustainable Finance Action Council (SFAC) Taxonomy Roadmap Report (2022) (hereafter Taxonomy Roadmap).

the proposed Taxonomy Council's Indigenous, Provincial, and Territorial Government Stakeholder Advisory Group in advising the Taxonomy Council on developing the Green and Transition Finance Taxonomy, including the chair of that Group participating as a member of the council.

A critically important part of Canada's sustainable "ecosystem" is a good transition finance taxonomy that will enable investors, regulators, and other stakeholders to understand what issuers are doing in terms of financing their climate-related mitigation and adaptation plans. A taxonomy is primarily a classification system – it outlines a common set of definitions and criteria to create clarity and agreement on what constitutes a "green" or "transition" investment.

"Canada needs to scale up climate investment rapidly to achieve a net-zero economy by 2050. By some estimates, Canada's climate investment gap is as high as $115 billion annually."[128] A green and transition finance taxonomy is key to Canada's transition to sustainable finance as it will set standards for climate-related financial instruments and benchmarking climate risk management. The federal government in its 2023 Fall Economic Statement announced that the Department of Finance will work in consultation with regulators, the financial sector, industry, and independent experts to develop a taxonomy that is aligned with reaching net zero by 2050.[129] CSA members should participate as a member of the proposed Taxonomy Council's Indigenous, Provincial, and Territorial Government Stakeholder Advisory Group in advising the Taxonomy Council as it moves forward. The proposal is that the chair of that group will serve as a member of the Council.

Taxonomies are a critical tool for solving two urgent and interrelated challenges within Canada's financial system: the ability to attract global capital and to reduce the risk of "greenwashing".[130] Investors need transparency and certainty in order to make strategic investment decisions. A taxonomy does not dictate investors' or companies' investment or capital expenditure choices.

A science-based taxonomy will create the market integrity, clarity, and interoperability necessary to accelerate global capital investment in Canada's low-carbon transition. The SFAC recommendations need to be implemented to facilitate company-level net-zero target setting, transition planning, and effective climate disclosure; evaluate projects against framework criteria to determine whether they are green or transition; and assess projects against "do no significant harm" criteria. The proposed Taxonomy will flow capital to decarbonization opportunities across all major emitting sectors. The CSA has an important role in helping to develop the Taxonomy in a manner that encourages investment in Canadian businesses and protects the safety and soundness of our capital markets and the financial system. What is important is that the Taxonomy is science evidence-based, transparent, independent, timely, results focused, and interoperable with other taxonomies globally.

A taxonomy will enable investors to get data on the number of capex budgeted or spent on mitigation and adaptation measures that are aligned with the taxonomy and allow investors to gain insights on what portion of a company's revenue is or is not coming from taxonomy-aligned activities. It would also serve as an anti-greenwashing tool.

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[128] Taxonomy Roadmap, note 127 at 1.

[129] Deputy Prime Minister Freeland, "2023 Fall Economic Statement" (21 November 2023), at 63, FES-EEA-2023-en.pdf (canada.ca).

[130] Taxonomy Roadmap, note 127.

Conclusion

The CCLI's seven key recommendations will align NI 51-107 with IFRS S2 Climate-related Disclosures.[131] We wish to emphasize the importance of working in tandem with the CSSB and not further delaying disclosure standards for Canadian issuers, consulting on a revised NI 51-107 that embraces at least CSDS 2 and ideally CSDS 1 as well. Since several members of the CSA sit on the CSSB's implementation committee, this level of cooperation is feasible and would make the best use of issuers', investors' and other stakeholders' time and resources in the consultation process. The CSA will also want to consider other inputs like the SEC final rule, if released, but at this stage, Canada should not wait for the SEC given the political situation in the US and instead, adopt the globally accepted baseline standards.

The CSA could then commit to reviewing and updating its securities law requirements every three years to reflect the best science-based disclosure standards.[132]

The CSA should, in the future, consider adoption of a "double materiality" standard, as adopted by the European Commission under the European Sustainability Reporting Standards (ESRS) in July 2023, developed in parallel with the IFRS ISSB standards. The ESRS asks companies to report on material impacts on ecosystems as well as financial material disclosures. The EU CSRD requires issuers and other undertakings to report development, performance, and position of the undertaking, but also information necessary for an understanding of the impact of the undertaking's activities on environmental, social, and employee matters, respect for human rights, anti-corruption, and bribery matters.[133] Thus, issuers must report both on the impacts of the activities of the undertaking on the environment and human rights, and on how sustainability matters affect the issuer.[134]

Another issue that should be on the CSA's list of future considerations is disclosure in respect of biodiversity and natural capital risks and opportunities. The EU's current priorities include Investing in green initiatives that promote sustainable agriculture and preserve biodiversity.[135] The European Financial Reporting Advisory Group (EFRAG) has a draft European Sustainability Reporting Standard E4 Biodiversity and Ecosystems, which sets out disclosure requirements related to companies' relationship to terrestrial, freshwater and marine habitats, ecosystems and populations of related fauna and flora species, including diversity within species, between species and of ecosystems, and their interrelation with Indigenous and affected communities.[136] It is aimed at enabling users of the sustainability statements to understand how the undertaking affects biodiversity and ecosystems, in terms of material positive and negative, actual and potential impacts; actions taken to prevent or mitigate material negative effects and protect and restore biodiversity and ecosystems; and how plans by the company to adapt its strategy and business model are in line with respecting the planetary boundaries of biosphere integrity and the land-system change and targets outlined in the Post-2020 Global Biodiversity Framework.[137] The federal government has stated its

[131] IFRS S2, note 6.
[132] The EU CSRD specifies that the Commission should review those sustainability reporting standards, including the sustainability reporting standards for small and medium-sized undertakings, every three years to take account of relevant developments, including the development of international standards; CSRD, note 88 at para 54.
[133] CSRD, note 88, Article 19a(1) and Article 29a(1) of Directive 2013/34/EU.
[134] CSRD, note 88, Article 19a(1) and Article 29a(1) of Directive 2013/34/EU.
[135] European Union, Priorities of the European Union 2019-2024 | European Union (europa.eu).
[136] European Financial Reporting Advisory Group (EFRAG), "Draft European Sustainability Reporting Standard E4 Biodiversity and Ecosystems" (November 2022), Download (efrag.org). As part of its mandate granted by the CSRD to provide technical advice to the European Commission on European Sustainability Reporting Standards ('ESRS'), EFRAG has been mandated to develop the standard for SME that are public-interest entities (January 2024), News - EFRAG.
[137] EFRAG, note 136. The Post 2020 Global Biodiversity Framework is designed by the Secretariat of the UN Convention on Biological Diversity (CBD) to guide actions worldwide through 2030, to preserve and protect nature and its essential services to people:

commitment to work with provincial, territorial, Indigenous and other conservation partners to develop and meet Canada's biodiversity commitments and obligations related to biodiversity conservation and sustainable use.[138]

The CCLI appreciates that the issues of double materiality and biodiversity are not likely to be taken up in the short term by securities regulators. We submit that progress on NI 51-107 should not be held up as the CSA can consider these issues going forward.

Thank you for considering our submission. The CCLI looks forward to discussing these recommendations with you.

Sincerely,
Janis Sarra

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https://www.cbd.int/article/draft-1-global-biodiversity-framework; as well as the EU Biodiversity Strategy for 2030, https://ec.europa.eu/environment/strategy/biodiversity-strategy-2030_en.

[138] Environment and Climate Change Canada (ECCC), Biodiversity Policy and Partnerships Program (2023) and ECCC, 2023-24 Departmental Plan: United Nations 2030 Agenda and the Sustainable Development Goals (2023).

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