Response to CSA Notice: Proposed National Instrument 51-107
Disclosure of Climate-related Matters

To the notice of:

- Alberta Securities Commission
- Autorité des marchés financiers
- British Columbia Securities Commission
- Financial and Consumer Services Commission, New Brunswick
- Financial and Consumer Affairs Authority of Saskatchewan
- Manitoba Securities Commission
- Nova Scotia Securities Commission
- Nunavut Securities Office
- Office of the Superintendent of Securities, Newfoundland and Labrador
- Ontario Securities Commission
- Office of the Superintendent of Securities, Northwest Territories
- Office of the Yukon Superintendent of Securities
- Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

environmental defence

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shift ACTION FOR PENSION WEALTH AND PLANET HEALTH

GREENPEACE

Canadian capital markets require transparent, consistent, and comparable information on climate change to inform investment decisions. Canada must catch up to international best practices on mandatory climate-related disclosure.

While Proposed National Instrument 51-107 (the "National Instrument") builds on CSA Staff Notice 51-333, 51-354, and 51-358, there remain critical omissions in this Draft. We would like to emphasize four key points:

1. **Climate change is material to all issuers. The final National Instrument should therefore not offer a comply-or-explain approach** for either scenario analysis and/or emissions accounting. A comply-or-explain approach would discredit climate change and emissions reduction as universal issues. It would also reduce comparability between issuers.
2. **The final National Instrument should make scenario analysis mandatory and should require reporting on all of Scope 1, 2, and 3 greenhouse gas (GHG) emissions.** These are essential tenets for subsequent Task Force on Climate Related Financial Disclosure (TCFD) activities: Governance, Strategy, Risk Management, and Metrics and Targets. Excluding scenario analysis or scope 3 emissions would significantly impair investors' ability to understand Canadian issuers' climate-related risks and alignment with a climate-safe future. This would fail to meet international best practices.
3. **Issuers should report in their financial statements** on scenario analysis and Scope 1, 2 and 3 emissions. This would ensure transparency, year-over-year comparability, and third-party assurance on accuracy.
4. **The Instrument should mandate decarbonization targets aligned with the Paris Agreement,** Canada's Nationally Determined Contribution (NDC), 2030 and 2050 emissions reduction targets, and a just transition**.** Disclosure is important for risk management, yet at this point, is insufficient (Caldecott, 2020). Climate change is a systemic risk; the CSA's mission is not only to protect investors by mandating disclosure, but also to reduce systemic risks. Targets should consider Scope 1, 2, and 3 emissions.

We appreciate the CSA's transparency in this process and are glad to participate in this consultation.

Responses to questions

Experience with TCFD recommendations

1. *For reporting issuers that have provided climate-related disclosures voluntarily in accordance with the TCFD recommendations, what has been the experience generally in providing those disclosures?*

Not applicable.

Disclosure of GHG Emissions and Scenario Analysis

2. *For reporting issuers, do you currently disclose GHG emissions on a voluntary basis? If so, are the GHG emissions calculated in accordance with the GHG Protocol?*

Not applicable.

3. *For reporting issuers, do you currently conduct climate scenario analysis (regardless of whether the analysis is disclosed)? If so, what are the benefits and challenges with preparing and/or disclosing the analysis?*

Not applicable.

4. *Under the Proposed Instrument, scenario analysis would not be required. Is this approach appropriate? Should the National Instrument require this disclosure? Should issuers have the option to not provide this disclosure and explain why they have not done so?*

The National Instrument should require issuers to perform and disclose scenario analysis. Scenario analysis is an essential building block for other pieces of the TCFD and is the most material and relevant information to stakeholders. Performing a scenario analysis generates the information needed for an issuer to devise Strategy, Metrics and Targets, and plan for Risk Management. Scenario analysis ensures an issuer integrates climate change across its business strategy and identifies gaps in current practices. It is an essential tool to support decision making. Furthermore, scenario analysis is important information for investors. Investors must understand an issuer's assumptions about the climate trajectory, their preparation for different scenarios, and the impacts on their business, to assess whether an investment should be included in their portfolio.

This piece of TCFD is essential to shift business focus to the long-term nature of climate change. Making it mandatory would signal that climate change is an important business factor for all issuers that they should systematically consider. To date, measurement of climate-related financial matters has centred on mapping near-term transition risk drivers (Basel, 2021). However, a credible business strategy must assess forward-looking factors under various

probable future states. For example, in the Bank of Canada and the Office of the Superintendent of Financial Institutions (OSFI)'s pilot project, the participating financial institutions commented that scenario analysis "helped them identify data gaps, explore new methodologies and develop a deeper understanding and awareness of the impacts of the climate transition on their portfolios" (Bank of Canada, 2021). Without mandated scenario analysis, many issuers may continue neglecting long-term risks. Investors would not be properly informed about the resiliency of issuers' forward-looking strategy and financial plans. Excluding scenario analysis would defeat the purpose of climate-related financial disclosure.

Scenario analysis does not have to be burdensome or costly. Most issuers already plan business strategy by evaluating different scenarios. Climate-related scenario analysis simply recognizes climate as a key driver of business outcomes. It can and should be integrated into existing practices. Furthermore, traditional risk categories (e.g. credit risk, market risk, liquidity risk, operational risk) can be used to capture climate-related financial risks. There are already many open-source resources (such as through TCFD, UNEP FI, UNPRI, among others). However, to support smaller issuers with fewer resources, the CSA could offer a public brief of scenario frameworks and industry sensitivities. This could be done in collaboration with the Bank of Canada and OSFI, which already evaluated exposure under different scenarios through their joint pilot project on climate risk scenarios (Bank of Canada, 2020) and the Bank's work with the Network for Greening the Financial System. Regulators could help make scenario analysis further accessible by "develop[ing] and standardiz[ing] methodologies for climate risk assessment and [improving] the availability of climate-related data" (Bank of Canada, 2021).

Scenarios should consider physical, transition, and liability risk. This should include, at a minimum, an escalating carbon tax; exposure to extreme weather in supply chains, data centers, critical infrastructure, and services; and probable future liabilities related to physical and transition effects. (The National Instrument did not outline specific guidance for their disclosure, however, climate-related liability risks are material for investors' decisions to buy, sell or hold securities.) Issuers should use multiple scenarios including a 1.5-degree pathway for transition risk (preferably the IEA's Net Zero Emissions Scenario) and a 3-or-4-degree pathway for physical risk. Analyses should intentionally use adverse scenarios to better prepare issuers for worst case and sudden scenarios given the uncertainty of climate change and the compounding effect of climate-related risks (Bolton et al, 2020). Scenario analysis should help inform decarbonization targets for all issuers, with metrics and targets aligning with the IEA or IPCC scenarios for 1.5 degrees.

Issuers should not have the option to exclude scenario analysis and substitute it with an explanation. In other words, a comply-or-explain approach is not appropriate. Climate change is material for all issuers. Therefore, all issuers should be required to disclose scenario analysis. Furthermore, since the National Instrument allows the regulator to grant exemptions from the Instrument, it could provide exemptions from scenario analysis requirements in extreme cases. Pre-emptively exempting all issuers by excluding scenario analysis requirements from the Instrument would thus be excessive and unnecessary.

5. *The TCFD recommendations contemplate disclosure of GHG emissions, where such information is material.*
    a. *The Proposed Instrument contemplates issuers having the option to disclose GHG emissions or explain why they have not done so. Is this approach appropriate?*
    b. *As an alternative, the CSA is consulting on requiring issuers to disclose Scope 1 GHG emissions. Is this approach appropriate? Should disclosure of Scope 1 GHG emissions only be required where such information is material?*
    c. *Should disclosure of Scope 2 GHG emissions and Scope 3 GHG emissions be mandatory?*
    d. *For those issuers who are already required to report GHG emissions under existing federal or provincial legislation, would the requirement in the Proposed Instrument to include GHG emissions in the issuer's AIF or annual MD&A (if an issuer elects to disclose these emissions) present a timing challenge given the respective filing deadlines? If so, what is the best way to address this timing challenge?*

The National Instrument should require reporting on all GHG emissions. Scope 1, 2, and 3 emissions are universally material. Emissions should be reported in annual financial statements for increased assurance, accuracy and comparability.

Scope 3 emissions are increasingly recognized internationally as a relevant part of a company's business. For example, in the May 2021 Hague District Court case against Royal Dutch Shell, the court ordered Shell "to ensure that the CO2 emissions attributable to the Shell group ***(Scope 1 through to 3)*** will have been reduced at end 2030, relative to 2019 levels, principally by 45% in absolute terms" (The Hague District Court, 2021, emphasis added).

Omitting Scope 2 and 3 emissions would be contrary to international initiatives, including the Science-Based Targets initiative, the TCFD, and the United Nations Principles of Responsible investment. The TCFD updated their recommendations for the first time in four years to encourage all companies to disclose Scope 3 emissions, under recommendation 4b and stated that Scope 3 disclosure is "an essential component of climate-related risk analysis in commercial and financial markets" (TCFD, 2021). Other jurisdictions are requiring issuers to disclose scopes 1 through to 3 GHG emissions. For example, the United Kingdom Financial Conduct Authority requires regulated firms to disclose Scope 3 emissions by 2024 (Financial Conduct Authority, 2021). Canadian issuers would be at a disadvantage for accessing international capital and business opportunities if they are not reporting all three scopes of emissions.

The CSA should mandate issuers to set decarbonization targets and report performance against these targets. This is part of CSA's role to reduce systemic risks – decarbonization would help reduce systemic climate-related risk, whereas there is no evidence that only disclosure would. Emission elimination targets should be science-based and align with the Paris Agreement, comprising Scope 1, 2, and 3 emissions. These targets should align with a company's fair share

based on historical emissions, and be at least as ambitious as Canada's emissions reduction target of 45% by 2030 based on 2005 levels. We outline this further in responses to Questions 9 and 18.

Emissions reporting should include all GHGs included in Canada's National GHG Inventory (carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), perfluorocarbons (PFCs), hydrofluorocarbons (HFCs), sulphur hexafluoride (SF_6) and nitrogen trifluoride (NF_3)).

6. *The Proposed Instrument contemplates that issuers that provide GHG disclosures would be required to use a GHG emissions reporting standard in measuring their GHG emissions, being the GHG Protocol or a reporting standard comparable with the GHG Protocol (as described in the Draft Policy Statement). Further, where an issuer uses a reporting standard that is not the GHG Protocol, it would be required to disclose how the reporting standard used is comparable with the GHG Protocol.*
    a. *As issuers have the option of providing GHG disclosures, should a specific reporting standard, such as the GHG Protocol, be mandated when such disclosures are provided?*
    b. *Is the GHG Protocol appropriate for all reporting issuers? Should issuers be given the flexibility to use alternative reporting standards that are comparable with the GHG Protocol?*
    c. *Are there other reporting standards that address the disclosure needs of users or the different circumstances of issuers across multiple industries and should they be specifically identified as suitable methodologies?*

To ensure consistency, the National Instrument should require issuers to report how alternative emission calculations compare to the GHG Protocol. We are otherwise agnostic on a particular GHG reporting methodology. The most common approaches are the GHG Protocol or ISO 14064 / 14067.

7. *The Proposed Instrument does not require the GHG emissions to be audited. Should there be a requirement for some form of assurance on GHG emissions reporting?*

Yes, the final National Instrument should mandate third-party assurance on GHG emissions reporting. GHG emissions should be reported in annual financial statements rather than in supplementary sustainability disclosures. This would directly subject the emissions reporting to third-party auditing while recognizing the material financial and business impact of GHG emissions. Many Canadian investors already demand audited GHG emissions reporting. Including this reporting in financial statements would support accurate and comparable disclosures.

8. *The Proposed Instrument permits an issuer to incorporate GHG disclosure by reference to another document. Is this appropriate? Should this be expanded to include other disclosure requirements of the Proposed Instrument?*

No, issuers should not be allowed to incorporate GHG disclosure by reference to another document. Issuers should report GHG emissions reporting in annual audited financial statements. This would directly subject the emissions reporting to third-party auditing while recognizing the material financial and business impact of GHG emissions. The National Instrument should make it mandatory to report GHG emissions in financial statements for all issuers (i.e., without offering a comply-or-explain approach). This reinforces that climate change and GHG emissions are financially material for all issuers.

Usefulness and benefits of disclosures contemplated by the National Instrument

9. *What climate-related information is most important for investors' investment and voting decisions? How is this information incorporated into these decisions? Is there additional information that investors require?*

The National Instrument should require issuers to communicate decarbonization targets based on current GHG emissions and their performance against those targets. Investors need to understand an issuer's contribution to climate change. To properly evaluate transition risk, investors must understand how a company aligns with the Paris Agreement. An issuer's adoption of short-term, mid-term, and long-term decarbonization targets would convey a business strategy to an investor, especially when paired with scenario analysis. Metrics and Targets is an important section of TCFD.

These targets must include Scope 1, 2 and 3 emissions and leverage science-based analysis. Issuers should also highlight their vulnerabilities and contingency plans in achieving these targets under different scenarios.

10. *What are the anticipated benefits associated with providing the disclosures contemplated by the Proposed Instrument? How would the Proposed Instrument enhance the current level of climate- related disclosures provided by reporting issuers in Canada?*

Providing TCFD disclosures that include scenario analysis and Scope 1, 2, and 3 emissions is essential for Canadian macroeconomic stability and Paris alignment. Audited emissions reporting and thoughtful scenario analysis would enable Canadian issuers to address transition risks while mitigating the physical damages of climate change. This would also inform investors about their full exposure to climate-related risks.

However, the National Instrument has critical omissions. The proposed National Instrument could hamper progress on climate finance in Canada by deviating from international best practices. The Draft risks reducing global competitiveness and access to capital for Canadian issuers.

Costs and challenges of disclosures contemplated by the National Instrument

11. *What are the anticipated costs and challenges associated with providing the disclosures contemplated by the National Instrument?*

Not applicable.

12. *Do the costs and challenges vary among the four core TCFD recommendations related to governance, strategy, risk management, and metrics and targets? For example, are some of the disclosures more (or less) challenging to prepare?*

Not applicable.

13. *The costs of obtaining and presenting new disclosures may be proportionally greater for venture issuers that may have scarce resources. Would more accommodations for venture issuers be needed? If so, what accommodations would address these concerns while still balancing the reasonable information needs of investors? Alternatively, should venture issuers be exempted from some or all of the requirements of the National Instrument?*

The National Instrument should apply to venture issuers. They comprise a notable part of Canada's capital markets and contribute to Canada's economic and financial landscape. Venture issuers may argue they need a more streamlined requirement for reporting; however, there are many affordable specialists and consultants to support issuers with "scarce resources" to complete their scenario analysis and emissions reporting.

The CSA's recommended phased-in approach seems appropriate. However, we encourage a revision such that venture issuers must comply in their annual filings due in 2025 (not 2026). Rapid action is required given the urgency of the climate crisis. Any later timeline would disadvantage venture issuers and the associated investors in preparing against critical transition risks.

Guidance on disclosure requirements

14. *We have provided guidance in the Draft Policy Statement on the disclosure required by the National Instrument. Are there any other tools, guidance or data sources that would be helpful in preparing these disclosures that the Draft Policy Statement should refer to?*

Not applicable.

15. *Does the guidance set out in the Draft Policy Statement sufficiently explain the interaction of the risk disclosure requirement in the National Instrument with the existing risk disclosure requirements in National Instrument 51-102?*

Not applicable.

Prospectus Disclosure

16. *Form 41-101F1 Information Required in a Prospectus does not contain the climate-related disclosure requirements contemplated by the National Instrument. Should an issuer be required to include the disclosure required by the National Instrument in a long form prospectus? If so, at what point during the phased-in implementation of the National Instrument should these disclosure requirements apply in the context of a long form prospectus?*

Yes, issuers should be required to include the climate-related disclosures required by the National Instrument in their long form prospectus. As outlined above, physical, transition and liability risks are material for investors' decisions on whether to buy, sell or hold securities, and as such climate risk disclosures provide important information that should be included in the long form prospectus. The disclosure requirements for the long form prospectus should apply as soon as is practicable, so they should be phased in at the same time as the other disclosure requirements.

Phased-in implementation

17. *The National Instrument contemplates a phased-in transition of the disclosure requirements, with non-venture issuers subject to a one-year transition phase and venture issuers subject to a three-year transition phase. Assuming the National Instrument comes into force December 31, 2022 and the issuer has a December 31 year-end, these disclosures would be included in annual filings due in 2024 and 2026 for non-venture issuers and venture issuers, respectively.*
    - *Would the transition provisions in the National Instrument provide reporting issuers with sufficient time to review the National Instrument and prepare and file the required disclosures?*
    - *Does the phased-in implementation based on non-venture or venture status address the concerns, if any, regarding the challenges and costs associated with providing the disclosures contemplated by the National Instrument, particularly for venture issuers? If not, how could these concerns be addressed?*

The CSA's recommended phase-in approach seems appropriate. However, we encourage a revision such that venture issuers must comply in their annual filings due in 2025 (not 2026). Rapid action is required given the urgency of the climate crisis. Any later timeline would disadvantage issuers in preparing for critical transition risks.

Future ESG considerations

18. *In its comment letter to the IFRS Foundation's consultation paper published in September 2020, the CSA stated that developing a global set of sustainability reporting standards for climate- related information is an appropriate starting point, with broader*

environmental factors and other sustainability topics to be considered in the future. What broader sustainability or ESG topics should be prioritized for the future?

The CSA should reduce fragmentation in sustainability reporting by working alongside the International Sustainability Standards Board and the The Value Reporting Foundation. The CSA should look to leapfrog other leading international standards and regulations (such as Europe's Sustainable Finance Disclosure Regulation (SFDR); the principles are relevant even though the SFDR's remit is funds rather than issuers).

Disclosure is important for risk management, yet at this point, is insufficient (Caldecott, 2020). Regulation beginning with 51-107 onwards should demonstrate a norm of moving to eliminating carbon emissions and advancing climate justice in order to reduce the systemic risks from climate change. ESG Regulation should include, for all issuers:

- Double-materiality reporting: both the climate risks to an issuer/portfolio and the climate implications of activities (European Parliament, 2021).
- Decarbonization targets that align with the Paris Agreement, Canada's NDC and 2030 and 2050 emissions reduction targets, and are science-based, comprising Scope 1, 2, and 3 emissions. These targets should align with a company's fair share based on historical emissions, and be at least as ambitious as Canada's emissions reduction target of 45% by 2030 based on 2005 levels.
- Just transition (environmental justice) principles, including
    - alignment with UNDRIP and respect for Indigenous governance, including a commitment to Indigenous peoples' right to free prior and informed consent,
    - support for workers and communities impacted by the climate transition,
    - support for communities impacted by physical climate damage,
    - contributions to climate mitigation and adaptation that align with a company's fair share based on historical emissions,
- Assurance that issuers are protecting biodiversity and are "nature-positive" as defined by United Nations Environment Programme - Finance Initiative.

This National Instrument could be the cornerstone of climate-related financial regulation in Canada. We encourage the CSA to make scenario analysis mandatory and to require reporting on all of Scope 1, 2, and 3 greenhouse gas (GHG) emissions.