

**ICGN**International Corporate Governance Network
Inspiring good governance & stewardship

TO:
The Secretary Ontario Securities Commission
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Fax: 416-593-2318
Via email: comment@osc.gov.on.ca

27th January 2022

Dear Canadian Securities Administrators,

Re: CSA Notice and Request for Comment, Proposed National Instrument 51-107

The International Corporate Governance Network (ICGN) welcomes the Canadian Securities Administrators' (CSA) Consultation and Request for Comment (Consultation) on Proposed National Instrument 51-107 (Proposed NI 51-107), climate-related disclosures.

Led by investors responsible for assets under management in excess of US\$59 trillion, ICGN is a leading authority on global standards of corporate governance and investor stewardship. Headquartered in London, our membership is based in more than 45 countries and includes companies, advisors, and other stakeholders. We are proud that Canada's leading pension funds and asset managers support ICGN as highly active and effective members. ICGN offers an important international investor perspective on corporate governance and investor stewardship to help inform public policy development and the encouragement of good practices by capital market participants. For more information on the ICGN, please visit www.icgn.org.

ICGN commends the CSA for taking up the challenge of enhancing requirements for corporate climate-related disclosures. Your initiative is timely and crucially important. As acknowledged in the Consultation, climate change presents a systemic risk to capital markets, the world's environment, and broader society. Systemic risk is defined as the risk that the financial system, or a major part of it, is in real and immediate danger of collapse or serious damage with the likelihood of material damage to the real economy. The nature of systemic risk is that it builds over time, it is interactive and synergistic and, once in play, is difficult to control.¹

ICGN has recently included specific reference to climate related reporting in the revision of the ICGN *Global Governance Principles*² which is used by many ICGN Members as a bellwether for their voting policies and company engagements. Principle 7.5 states:

"The board should assess the impact of climate change on the company business model and how it will be adapted to meet the needs of a net zero economy as part of a long-term strategy. This includes setting and disclosing targets to reduce carbon emissions and a period for achievement. Where climate change risks, whether physical or transitional, are identified as material and

¹ ICGN, *Investor Framework for Addressing Systemic Risks*, June 2019. <https://www.icgn.org/policy/viewpoints/investor-framework-addressing-systemic-risks>

² ICGN *Global Governance Principles*, 2021: <https://www.icgn.org/policy/global-governance-principles>

relevant, reporting should include discussion of the diligence process, strategy, metrics, targets and initiatives used to manage the risks. Disclosure around these actions would help investors understand the resilience of companies facing climate change risks and to assess progress towards achieving net zero targets.”

There is a global consensus that climate change presents the most severe systemic risk to business, to investors, to the economy, and to society. The 2021 United Nations Climate Change Conference (COP26) in Glasgow, Scotland, United Kingdom served to underscore this global consensus and, with the creation of the Glasgow Financial Alliance for Net Zero (GFANZ), positions the financial sector as critical to efforts to tackle the climate challenge.³ Indeed, a new bar has been set as an increasing number of corporations and investors are developing transition plans with near term and far term performance benchmarks to reach net zero greenhouse gas emissions by 2050 or sooner. In recognition of this, ahead of COP 26, ICGN published a *Statement of Shared Climate Change Responsibilities* to address climate related priorities for companies, investors, auditors, regulators and standard-setters⁴.

Governments, civil society organisations, think-tanks, academic institutions, and capital markets participants around the world are addressing the challenges presented by climate change. Capital markets regulators have a central role to play. Properly designed disclosure requirements will allow investors to assess and price climate risk. This will allow for the allocation of capital towards companies most able to respond to climate change through climate mitigation, adaptation, and the provision of solutions to climate change causes and impacts.

In this context, the CSA has appropriately based the Proposed NI 51-107 on the disclosure requirements specified in the Task Force on Climate-Related Financial Disclosures (TCFD). As reported in the 2021 TCFD *Status Report*, the Task Force now has over 2,600 supporters globally, including 1,069 financial institutions and more than 120 regulators and governmental entities. TCFD supporters now span 89 countries and jurisdictions and nearly all sectors of the economy with a combined market capitalisation of US\$25 trillion — a 99% increase from the previous year.⁵

Key markets are now incorporating the TCFD into global best regulatory and disclosure practice. These include the European Union’s Corporate Sustainability Reporting Directive (CSRD), one element of a comprehensive sustainable finance package.⁶ Mandated to develop reporting standards under the CSRD, the European Financial Reporting Advisory Group (EFRAG) released a Climate Standard Prototype Working Paper in September 2021. The prototype incorporates all features of the TCFD framework. From 2023, more than 50,000 large companies with a presence in the EU will be reporting to the TCFD framework plus other sustainability components.⁷

³ Glasgow Financial Alliance for Net Zero: <https://www.gfanzero.com>

⁴ ICGN *Statement of Shared Climate Change Responsibilities to the United Nations Climate Change Conference of the Parties 26 (COP 26)*, 20 October 2021: <https://www.icgn.org/sites/default/files/ICGNLettertoPresidentofCOP26StatementofsharedClimateChangeResponsibilitiesOctober2021>

⁵ Task Force on Climate-Related Disclosures, *2021 Status Report*, October 2021 at <https://www.fsb.org/wp-content/uploads/P141021-1.pdf>.

⁶ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU Taxonomy, Corporate Social Responsibility Reporting, Sustainability Preferences and Fiduciary Duties: Directing Finance Towards the European Green Deal*, (Brussels: 4 April 2021. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/CELEX>).

⁷ European Financial Reporting Advisory Group, *Climate Standard Prototype, Working Paper*, 8 September 2021. <https://www.efrag.org/Assets/DownloadFEFRAGPTF-ESRSClimatestandardprototypeworkingpaper>

In June 2021, following on the stated intentions of the United Kingdom's Chancellor of the Exchequer, the Financial Conduct Authority (FCA) advanced proposals to apply TCFD-aligned disclosure requirements to issuers of standard-listed equity shares and introduce TCFD-aligned disclosure requirements for asset managers, life insurers and FCA-regulated pension providers.⁸ In Australia, while the regulators have not decided on making TCFD disclosure mandatory, the Australian Sustainable Roadmap of the Australian Sustainable Finance Institute recommends the largest listed companies and major financial institutions to report according to the TCFD recommendations by 2023 on an "if not, why not" basis.⁹ While in Japan, the recently updated Japan Corporate Governance Code includes a new supplementary principle (3.1.3) to "require companies listed on the Prime Market to collect and analyse data on the impact of climate change...on business activities and profits and to enhance the quality of disclosures based on TCFD recommendations".¹⁰ TCFD-aligned disclosure regulations are also under development in Hong Kong, Switzerland, and Brazil. Mandatory TCFD disclosures have already been enacted in New Zealand – the first market to do so.¹¹

The IFRS Foundation is in the process of consolidating the Climate Disclosure Standards Board and the Value Reporting Foundation (which houses the Integrated Reporting Framework and the Sustainability Accounting Standards Board) into the International Sustainability Standards Board (ISSB). The ISSB Climate-related Disclosures Prototype released in November 2021 embraces the TCFD framework.¹² It is important to note that the ISSB has established a Montreal office.¹³ This raises Canada's profile in the sustainability reporting space and allows Canada to both benefit from and lead as standards develop.

Beyond standards-setters and regulators, the TCFD enjoys support at the highest political levels: both the G-7 and G-20 Finance Ministers and Central Bank Governors announced in 2021 their intention to advance globally-aligned TCFD-aligned disclosure frameworks adapted for home markets.¹⁴ In addition, advancing climate financial disclosure based on the TCFD is included in the 16 December 2021 mandate letter of the Canadian Deputy Prime Minister and Finance Minister.¹⁵

The direction of travel is clear, rapid, and accelerating. TCFD-aligned reporting is where the world is going, and the speed of regulatory developments will increase in 2022. It is in this context that ICGN offers comments on the CSA modifications to the TCFD recommendations. Our remarks draw from established ICGN positions on climate-related disclosure and our 2021 submission to the US Securities and Exchange Commission (SEC) on climate change disclosures.¹⁶ In

⁸ Financial Conduct Authority, *Enhancing Climate-Related Disclosures by Asset Managers, Life Insurers, and FCA-Regulated Pension Providers*, June 2021. <https://www.fca.org.uk/publication/consultation/cp21-17>

⁹ Australian Sustainable Finance Initiative, *Sustainable Finance Roadmap*, 2020 <https://www.sustainablefinance.org.au/roadmap-1>

¹⁰ Japan Corporate Governance Code, JPX, Tokyo Stock Exchange, June 2021

¹¹ New Zealand Government, "New Zealand First in the World to Require Climate Risk Reporting", 15 September 2020. www.beehive.govt.nz/release/newzealandfirstworldrequireclimateriskreporting

¹² Technical Readiness Working Group for the ISSB, *Climate-Related Disclosure Prototype*, November 2021. www.ifrs.org/content/dam/ifrs/groups/trwg/trwgclimaterelateddisclosuresprototype

¹³ Department of Finance Canada, "Deputy Prime Minister Welcomes Announcement of International Sustainability Standards Board Office in Canada", 3 November 2021.

www.canada.ca/en/departmentfinance/news/2021/11/deputyprimeministerwelcomesannouncementofinternationalsustainabilitystandardsboardofficeincanada

¹⁴ Reuters, "G7 Backs Making Climate Risk Disclosure Mandatory", 5 June 2021

www.reuters.com/business/environment/g7backsmakingclimateriskdisclosuremandatory20210605. IFRS, "IFRS Response to G20 Finance Ministers' Communique", 10 July 2021.

www.ifrs.org/newsandevents/news/2021/07/ifrsfoundationresponsetog20financeministerscommunique

¹⁵ Prime Minister of Canada, "Deputy Prime Minister and Minister of Finance Mandate Letter", 16 December 2021. <https://pm.gc.ca/en/mandateletters/2021/12/16/deputyprimeministerandministerfinancemandateletter>

¹⁶ [ICGN Letter to US SEC climate disclosure June 2021](#)

developing this submission, we have consulted with Canadian Coalition for Good Governance (CCGG) and the Canada Climate Law Initiative (CCLI). The comments provided below are those of the ICGN.

Scenario Analysis

Under the Proposed NI 51-107, companies would not be required to provide a scenario analysis. The ICGN believes that scenario analysis is integral to the over-arching framework in addressing the risks of climate change and setting plans for reducing emissions to net zero over time. We recommend that the CSA revisit this modification to TCFD-aligned reporting.

Climate change will impact company strategy, operations, reputations, and finances along the entire value chain, wherever they operate and for decades to come. Although the precise shape and pace of change is uncertain, physical, transition, and regulatory risks have already emerged. To plan, survive, and thrive under these conditions, scenario analysis will be critical to any company's ability to make strategic and risk management decisions in a structured, systematic, and analytical way.

Following on the recommendations of the TCFD, ICGN believes companies should disclose, at minimum, basic qualitative information regarding the scenario analysis, including how it has informed strategy, operations, capital allocation, and other related financial implications. The disclosure should describe the resilience of the business taking into account different climate scenarios.

The CSA reports that companies have expressed concern about the inherent uncertainties and costs of conducting climate scenario planning. Yet many companies are issuing TCFD reports with particular strengths in the extractives sectors. Indeed, some Canadian extractives companies provide leading examples of how scenario analysis can be conducted and how this approach can benefit strategy, risk management and capital allocation. While there is room for improvement in these disclosures, reporting of this nature represents a significant advance. This is the kind of information investors seek.

In terms of resourcing, the TCFD reports that, depending on size and complexity, companies will need to assign a scenario team of 4 to 20 individuals for a duration of 2 to 6 months. These may be individuals currently serving in sustainability or similar roles. We also note the existence of publicly-available scenarios published by the Intergovernmental Panel on Climate Change (IPCC) and the International Energy Agency (IEA) among others. Companies are not starting from scratch. The TCFD provides extensive publicly-available guidance on scenario planning and offers free on-line training programs. The consulting industry is also making available climate scenario planning services with forecasting capabilities across a range of potential risks and impacts. In ICGN's view, the gravity of climate risks combined with the widespread availability of tools and services places an emphasis on action, rather than inaction. Companies should begin developing skill sets immediately in anticipation of adoption of the Proposed NI 51-107.

Concerns have also been raised that the disclosure of climate scenarios raises potential legal consequences related to forward-looking statements. ICGN supports the recommendation of the Canadian Expert Panel on Sustainable Finance to allow for a safe harbour provision for climate

scenario planning.¹⁷ This provision would be designed to allow for companies to begin the scenario planning process, recognising the challenges of this exercise and the learning that must occur, while protecting company officers and directors from legal or regulatory liability over reported information, contingent on proof of adequate processes and controls for reporting rigour. Over time, as scenario planning becomes better established, the safe harbour provision could be removed or be subject to sunseting over a period of years.

Assuming approval by December 2022, ICGN recommends that Proposed NI 51-107 require non-venture companies to disclose scenario planning processes in 2024 and scenario planning results (processes, assumptions, impact on planning) in 2025. We also recognise the resource constraints for venture companies. For these reasons, we recommend that such companies be allowed a grace period by which they begin reporting processes in 2025 and results in 2026.

Regulation must find room for the learning process to occur. Perfection should not be the enemy of the good. But delaying the learning on scenario analysis, the reporting process, and the eventual disclosure, will only place Canadian companies behind their global competitors, potentially raising the cost of global capital. Canadian capital markets are unlikely to be well-served by such an eventuality.

Disclosure of Greenhouse Gas Emissions

The Proposed NI 51-107 contemplates issuers disclosing the metrics used to assess climate-related risks and opportunities where such information is material. Companies would also disclose Scope 1, 2, and 3 greenhouse gas (GHG) emissions and the related risks, or explain why they have not done so. As an alternative, the CSA is consulting on requiring issuers to disclose Scope 1 emissions only. Companies would disclose Scope 2 and 3 on a comply or explain basis.

As reported by the Carbon Trust, Scope 3 emissions can represent as much as 90% of all company emissions — information critical for managing climate risks and setting strategy. We note that the ISSB Climate-related Disclosures Prototype recommends disclosure of greenhouse gas emissions in terms of absolute gross Scope 1, Scope 2, and Scope 3, expressed as metric tonnes of CO₂ equivalent, in accordance with the Greenhouse Gas Protocol.¹⁸ For Scope 3 emissions, the company will explain the activities included within this metric. Disclosure standards under development in other jurisdictions are tracking in this direction including those proposed by EFRAG for the EU.

In addition, TCFD analysis shows that of the 2,500 companies in the MSCI All Country World Index, from 2017-2019 disclosure of Scope 3 emissions increased from 28% to 34%.¹⁹ In its consultation for the 2021 *Guidance on Metrics, Targets and Transition Plans*, the TCFD found that 47% of respondents supported disclosure of Scope 3 not subject to materiality (70% for Scope 1 and 2); 43% supported a materiality test. Ten per cent were not certain.²⁰ The GHG Scope 3

¹⁷ Government of Canada, *Final Report of the Expert Panel on Sustainable Finance*, 2019, https://publications.gc.ca/collections/collection_2019/eccc/En4-350-2-2019-eng.pdf

¹⁸ Technical Readiness Working Group for the ISSB, *Climate-Related Disclosure Prototype*, November 2021. www.ifrs.org/content/dam/ifrs/groups/trwg/trwgclimaterelateddisclosuresprototype

¹⁹ TCFD, *Guidance on Metrics, Targets and Transition Plans*, October 2021, p.55. https://assets.bbhub.io/company/sites/60/2021/07/2021-Metrics_Targets_Guidance-1.pdf

²⁰ TCFD, *Metrics, Targets and Transition Plans Consultation: Summary of Responses*, October 2021, p. 22 https://assets.bbhub.io/company/sites/60/2021/10/October_2021_Metrics_Targets_and_Transition_Plans_Consultation_Summary_of_Responses.pdf

Protocol was first published in 2011.²¹ Since this time, companies, and consultants have built considerable expertise in measuring Scope 3 emissions. Data and methodologies have matured sufficiently such that disclosure of relevant, material categories of Scope 3 emissions is now appropriate for all sectors.²²

ICGN believes, given the systemic, severe, and urgent nature of climate change, that Canadian companies should be required to disclose absolute Scope 1 and 2 emissions independent of their materiality assessment. Consistent with TCFD recommendations, ICGN strongly urges companies to disclose Scope 3 emissions as well. As an investor body we strongly believe that materiality should drive disclosure relating to sustainability reporting. At the same time, we observe that the traditional investor view of financial materiality is in flux and is under challenge through the growing focus on dual materiality - the impact that the company has on the environment and society, and not just the impact of sustainability factors on the company's own financial position and prospects. Moreover, the concept of dynamic materiality suggests that the materiality of systemic events, such as climate change, can change in nature over time such that it can come have clear financial materiality for the company and its investors.

We suggest, given their nature, Scope 3 emissions will need to be assessed in order for companies to make a determination of materiality. If a company makes this assessment, it should then disclose the results. Low Scope 3 GHG emissions would be viewed by the market as positive. Companies should want to disclose such information. Among those companies benefitting from non-disclosure would be those who would prefer not to report due to high Scope 3 emissions. Investors fear these companies will use a lack of materiality argument as the rationale for non-disclosure. To obviate this possibility and ensure robust rationales for non-disclosure, ICGN recommends that external, independent assurance must be published by those companies choosing not to disclose Scope 3 emissions. It is also essential that additional climate-related metrics should be disclosed if considered material (e.g., capital allocated to development of low carbon products and services, assets at risk, impairment charges due to exposed assets, etc.).

Beyond phasing in Scope 3 disclosures over a period of 3 to 4 years (as with scenario planning) we also suggest consideration of two additional mechanisms that could allow for ease of transition to Scope 3 reporting. First, the CSA could consider a safe harbour provision applicable to Scope 3 emissions disclosure, similar to that suggested for scenario planning, to recognise the challenges of making the new calculations. Second, the CSA could work with other agencies of government to establish a funding mechanism by which venture and small cap companies could access support to develop internally or access externally leading expertise on Scope 3 emissions measurement as well as other aspects of climate disclosure. This kind of climate change facility was proposed in the 2019 *Final Report of the Expert Panel on Sustainable Finance*. While not focused on reporting, we suggest that today the Fonds Écoleader program in Québec represents the kind of facility that could be established to expedite the transition to TCFD reporting.²³ We note that in France, in 2022, the Autorité des Marchés Financiers has prioritised assistance to companies to promote compliance with the CSRD.²⁴

²¹ Greenhouse Gas Protocol, *Corporate Value Chain (Scope 3) Accounting and Reporting Standard*. <https://ghgprotocol.org/standards/scope-3-standard>

²² TCFD, *Proposed Guidance on Climate-Related Metrics, Targets and Action Plans*, p.17 https://assets.bbhub.io/company/sites/60/2021/05/2021-TCFD-Metrics_Targets_Guidance.pdf

²³ <https://www.fondsecoleader.ca/decouvrir-le-fonds/>

²⁴ Autorité des Marchés Financiers, *Priorities 2022*, January 2022. https://www.amf-france.org/sites/default/files/private/2022-01/AMF%202022%20Priorities%20for%20action_1.pdf

In addition, ICGN recommends the Proposed NI 51-107 include reference to independent assurance as to the accuracy, completeness, and consistency of all emissions disclosure. One pathway for assurance implementation would be to require emissions disclosure in the Management Discussion & Analysis under National Instrument 52-109, *Certification of Disclosure in Issuers' Annual and Interim Findings*.²⁵ This would ensure that emissions disclosure would be subject to review by the audit committee, approval by the board of directors and certification by the Chief Executive Officer and the Chief Financial Officer.

ICGN also affirms support for the GHG Protocol as the appropriate global standard for emissions disclosure. We see no rationale for opening the question of alternative methods. The GHG Protocol is the most widely used methodology and enjoys broad stakeholder support. Allowing for alternatives would delay sensible disclosures and undermine the investor drive for comparable information.

Additional Environmental, Social and Governance (ESG) Issues

Beyond the TCFD framework, ICGN believes companies should be making net zero commitments and disclosing science-based, net zero transition plans. We note that both the ISSB Technical Readiness Working Group November 2021 prototype and the October 2021 TCFD *Guidance on Metrics, Targets and Transition Plans* initiate the integration of plans into the overall framework of climate disclosure. The CSA should give serious consideration to requiring transition plan disclosures as part of the regulation.

ICGN believes that closely related to climate change, risks associated with biodiversity loss now display characteristics of systemic risk. In response, the Task Force on Nature-Related Disclosure (TNFD) has been established to set biodiversity disclosure standards.²⁶ We also note ongoing concerns with fighting the Covid-19 pandemic and rapidly increasing investor interest in risks associated with inequality and inequity across several dimensions, polarised political situations, and threats to democracy and rule of law, poor human capital management practices, and the ongoing potential for human rights violations throughout the value chain.

Globally, sustainability developments in the European Union appear to be most advanced at this time and may offer the CSA a glimpse of a regulatory future. Given Canada's reliance on global capital, consideration should be given to the main provisions of the EU CSRD as these emerge. The CSA should also monitor developments as the ISSB and how leading companies and investment institutions are approaching the Sustainable Development Goals (SDGs) as major indicators of risk and areas of opportunity.²⁷

In addition, ICGN encourages the CSA to observe developments in concepts of materiality. Sustainability disclosures should focus on financially materially relevant factors, assessing how environmental and social factors are impacting the development, performance, position, and financial condition of the company. But, as noted above, the European Union is building a regulatory structure requiring the identification of a second materiality dimension: that is, the environmental and social impacts of the business on its stakeholders. This 'double materiality' standard represents a significant shift in our conception of materiality where companies will likely be required to report internal impacts of sustainability issues on the company's financial

²⁵ National Instrument 52-109, *Certification of Disclosure in Issuers' Annual and Interim Filings*, https://www.osc.ca/sites/default/files/pdfs/irps/rule_20081024_52-109_cert-of-disclosure.pdf

²⁶ <https://tnfd.global>

²⁷ <https://www.gisdalliance.org>

performance as well as the company's external impacts on society and the environment. In any event, there is a need to make long horizon risk assessments in order to focus capital markets on the long term. Due consideration should be given for requiring companies to look further into the future when making impairment assessments, assessing financial risks, setting strategy, and allocating capital. ICGN members invest for the long-term and want companies to adopt strategies and operations that focus on the long-term.

In conclusion, ICGN appreciates the opportunity to provide comment on Proposed NI 51-107 and we hope you find our feedback helpful in your deliberations. Should you wish to discuss our comments further please contact me, George Dallas, ICGN's Policy Director (George.dallas@icgn.org), or Robert Walker, ICGN's Sustainability Policy Manager (rwalker@icgn.org).

Yours faithfully,



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CC:

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British Columbia Securities Commission
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Financial and Consumers Authority of Saskatchewan
Manitoba Securities Commission
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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