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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

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Re: CSA Proposed National Instrument 51-107 Disclosure of Climate-related Matters and its companion policy ("CSA proposal")

Dear Ontario Securities Commission Secretary and Me Lebel,

The Canadian Bankers Association (CBA) would like to take this opportunity to provide comments on the CSA's proposal on Disclosure of Climate-related Matters. Overall, we support the CSA's plans to generally align its disclosure requirements with the Task Force on Climate-related Financial Disclosures (TCFD) recommendations. The CBA also supports a climate disclosure regime that fosters comparability and improves the quality of disclosure among various issuers. Mandatory GHG emissions disclosure requirements, where appropriate, are helpful in increasing the quality and quantity of companies' reporting on their emissions. Mandating disclosure, where appropriate, should also improve data quality and data availability, thus in turn supporting banks' efforts related to net-zero emissions targets and the

interim target setting work.

Furthermore, we strongly encourage coordination efforts with international and domestic regulators and standard setters (e.g., Basel Committee on Banking Supervision, OSFI, International Sustainability Standards Board (ISSB), U.S. Securities and Exchange Commission) to harmonize climate disclosure requirements based on the TCFD recommendations. By driving towards a single set of uniform disclosure standards, we believe this will enhance the comparability of disclosures both within and across jurisdictions and support the investment and decision-making needs of various stakeholders.

In this letter, we provide our views on key issues. We support mandatory disclosure of Scope 1 and 2 GHG emissions for large issuers; however, the CBA has some concerns on the timing and location of the CSA's proposed disclosure requirements and would like to highlight that the securities law standard of materiality remains an important concept to both issuers and investors. In this, we offer an alternative approach which supports disclosure in appropriate circumstances but does not expand the scope of liability for disclosures that are not material to the issuer. We also comment on the transition period and scenario analysis, and provide a suggestion related to safe harbour provisions. Coverage of these items is also provided in the attached Appendix with responses to individual CSA consultation questions.

GHG emissions

We understand that the CSA proposal contemplates a comply or explain approach for the disclosure of all forms of GHG emissions in an issuer's Annual Information Form (AIF) or Management's Discussion and Analysis (MD&A), even if the information is not material to an issuer.

The CSA is also consulting on two alternative proposals, which would require issuers to disclose in an AIF or MD&A:

(a) Scope 1 GHG emissions if material, with disclosure of Scope 2 and 3 GHG emissions subject to a comply or explain approach; or
(b) Scope 1 GHG emissions even if not material, with disclosure of Scope 2 and 3 GHG emissions subject to a comply or explain approach.

We propose a fourth option. We believe that disclosure of Scope 1 and Scope 2 GHG emissions should be mandatory for large issuers, with the location to be determined by materiality. Disclosure of Scope 3 GHG emissions should be on a comply or explain basis for large issuers, with the location also determined by materiality. If these disclosures are not material to an issuer from a securities law perspective, they could be included in a non-financial disclosure document, and if this information is material to the issuer, should be included in an AIF or MD&A. This approach supports the important tenet that investors be provided with information that is material when making their investment decisions.

However, given that calculating GHG emissions will be a new activity for many issuers, "smaller" issuers may require more time than their "larger" counterparts to develop the capability to disclose Scope 1, 2 and 3 GHG emissions. To address this concern, we suggest that the CSA consider an approach whereby only "larger" issuers would be subject to the mandatory GHG emissions disclosure requirement

upon the rules being effective.[1]

As noted above, mandatory Scope 1 and 2 GHG emissions disclosure requirements for large issuers would be helpful in increasing the quality and quantity of companies' reporting on their emissions. These disclosures could be excerpted and filed on SEDAR, to make this information easily accessible to the CSA and all interested stakeholders, but not incorporated by reference into an issuer's prospectuses.

We note that Scope 1 and 2 GHG emissions are typically disclosed together, and companies typically set a single target for both Scope 1 and 2 GHG emissions since they are within an issuer's control as either direct emissions or indirect emissions from the generation of purchased energy. Requirements related to Scope 1 and 2 GHG emissions should therefore be identical so stakeholders can track progress against the target. However, Scope 3 GHG emissions, which occur in the value chain of the company, including upstream and downstream emissions, are more complex and less standardized and should therefore not be mandated beyond a comply or explain approach for large issuers.

Location of the proposed CSA disclosure and transition period

We note the CSA's proposal specifying the location of climate-related financial disclosure requirements related to governance, strategy, risk management, and metrics and targets. We are concerned that climate governance and risk management disclosure may be required in an issuer's MD&A, AIF or Proxy Circular ("core securities law documents") even where not material. We believe that flexibility should be provided with respect to the location of the disclosure, including in an issuer's non-financial documents and reports (outside of core securities law documents), where the information is not material in accordance with securities law standards.

Should any GHG emissions disclosures be required in an issuer's MD&A and AIF, we have significant concerns with the timing of when this disclosure would be required to be reported. We would like to highlight that the collection of energy consumption data, the calculation of GHG emissions, and external verification takes several months after banks' fiscal year-ends to complete, whereas banks generally publish their annual MD&A and AIF within 4 – 6 weeks of their year-end. By consequence, it would not be practicable for GHG emissions to be disclosed at the same time as financial disclosures for the same fiscal year. This is likely also true of other issuers affected by these rules. This could be addressed by allowing for longer timelines beyond an issuer's fiscal year-end to make GHG emissions related disclosures for the current fiscal year, or to allow for a different (earlier) year-end for GHG emissions quantifications than for financial disclosures.

Should flexibility be permitted, we are more comfortable with the one-year transition period that is proposed by the CSA for non-venture issuers. However, we strongly urge the CSA to consider the challenges that may apply to smaller issuers and the time/resources required to measure GHG emissions data to ensure that appropriate accommodation is provided. Proportionality should be considered with respect to adoption of the proposed requirements.

[1] This threshold can be based on different metrics. An example of a revenue-based threshold is outlined in the 2021 TCFD Implementation Guidance, where the TCFD suggested a US$1 billion USD annual revenue threshold for non-financial groups before they recommend additional disclosures.

Scenario analysis

Under the CSA proposal, we note that scenario analysis is not required. We support this position and note that scenario analysis methodologies are currently being developed by financial regulators and are not well-established. We believe there is a risk of inadvertent and inaccurate disclosure during the early stages of development with results that may be too uncertain to be of value to investors.

Safe harbour provisions

We strongly encourage the CSA to further consider climate-specific safe harbour protections, in addition to the safe harbour for forward looking statements, as it would be beneficial to encourage robust climate disclosure, even in cases where methodologies are less clear and data is imperfect. Issuers will be required to balance the request for useful, transparent disclosure against the fact that methodologies and data continue to evolve, and so additional safe harbour protection may be beneficial to issuers and encourage more transparency.

We would be pleased to discuss any questions you may have and would like to thank you for the opportunity to provide comments on the CSA proposal.

Sincerely,

“Darren Hannah”

Attachment

CBA Members' Comments and Requests for Clarification
CSA consultation 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?
No comments.
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?
No comments.
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?
No comments.
4. Under the Proposed Instrument, scenario analysis would not be required. Is this approach appropriate? Should the Proposed Instrument require this disclosure? Should issuers have the option to not provide this disclosure and explain why they have not done so?

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We support the CSA's proposal that scenario analysis would not be required.
5. The TCFD recommendations contemplate disclosure of GHG emissions, where such information is material.
The Proposed Instrument contemplates issuers having the option to disclose GHG emissions or explain why they have not done so. Is this approach appropriate?
Our view is that this approach is appropriate in part. We support mandatory disclosure of Scope 1 & 2 GHG emissions for large issuers, however NI 51-107 should make clear that Scope 1 & 2 GHG emissions disclosure can be disclosed in non-financial disclosure documents such as a TCFD Report, rather than in an issuer's AIF or MD&A ("core" securities law documents), if this information is not material to the issuer from a securities law perspective. However, due to the time and resources required to measure GHG emissions data, and recognizing that smaller issuers may not be as far along in their emissions measurements as larger issuers, the CSA should consider making GHG emissions data mandatory only for larger issuers upon the rules being effective, with the CSA to determine the appropriate threshold for measuring large issuers. Disclosure of Scope 3 GHG emissions should be on a comply or explain basis for large issuers, with the location also determined by materiality. This would benefit issuers with activities that are not materially affected by climate risk to reduce their regulatory and legal compliance burden. As we highlighted in our cover letter, these disclosures could be excerpted from an issuer's voluntary disclosures and filed on SEDAR in order to be easily accessible to the CSA and interested stakeholders, but not incorporated by reference into an issuer's prospectus(es). We believe this is appropriate since not all issuers have similar resources and activities to determine their Scope 3 emissions.
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?
We support mandatory disclosure of Scope 1 & 2 GHG emissions for large issuers if issuers are allowed the flexibility to disclose these emissions outside of their "core" securities law documents, if this information is not material. Scope 3 GHG emissions should be

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disclosed on a comply or explain basis, for large issuers, with the flexibility to disclose outside of "core" securities law documents, if this information is not material. Disclosure of Scope 1, 2 and 3 emissions should only be required to be set out in core securities law documents if material to an issuer.
Should disclosure of Scope 2 GHG emissions and Scope 3 GHG emissions be mandatory?
No. Please see our responses to other parts of question 5 above. It should be noted that our position in respect of Scope 3 GHG emissions disclosure is based on the fact that market participants face many challenges with disclosing quantitative data on climate risks. These data challenges include lack of data granularity, interconnectedness of data, proliferation and comparability of data providers, data materiality, and access to reliable and validated tools. Currently, much of the data that is needed to measure Scope 3 emissions is either of poor quality or simply not available. For this reason, Scope 3 emissions should not be mandatory at this time and should instead be on a comply or explain basis for large issuers.
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?
While CBA members are not required to report GHG emissions under existing federal or provincial legislation, please see industry comments in our cover letter and in response to questions 5 and 8 regarding concerns with the location and timing of the disclosure, if any disclosure were to be required in the MD&A and AIF.
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 Proposed Policy). 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.

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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?
We support use of the GHG Protocol or a reporting standard comparable with or recognized by the GHG Protocol.
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?
We support use of the GHG Protocol or a reporting standard comparable with or recognized by the GHG Protocol.
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?
We support use of the GHG Protocol or a reporting standard comparable with or recognized by the GHG Protocol. Standards that are developed by the International Sustainability Standards Board (ISSB) or referenced by the SEC should be taken into account. Flexibility should be given to issuers to adapt to global standards as they evolve.
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?
We agree that GHG emissions disclosure should not be required to be audited. We support a requirement to have some form of assurance on Scope 1 & 2 GHG emissions reporting; however, we propose that the requirement allow issuers the flexibility to determine the appropriate type and level of assurance with consideration of materiality. For example, initial assurance for issuers may be in the form of a process review or gap analysis. We also suggest that this area may need to be revisited in relation to any future disclosure or assurance-related guidance from the ISSB. We believe assurance requirements should be out of scope for Scope 3 GHG emissions at this time.

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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?
We support issuers having the flexibility to include all TCFD/proposed CSA disclosures (not limited to GHG disclosures) in a location deemed appropriate, for example non-financial disclosure documents, if this information is not material. Issuers should not be required to incorporate by reference GHG emissions disclosures in another document into the MD&A and AIF, if such disclosures are not material. We strongly believe that issuers should be permitted to decide whether GHG emissions are material for securities law purposes and where they are determined to be not material, disclose GHG emissions in non-financial disclosure documents such as in dedicated ESG and TCFD reports. This approach would also allow for a separate report to be published at a later date than the annual MD&A and AIF. Further, as underlying data and methodologies are still evolving, it is not possible for Canadian banks to align the timing of the proposed GHG emissions disclosures with our financial reporting which is based on fiscal year-end timelines. We are very concerned that banks will not be able to include GHG emissions data in our AIF or MD&A, as GHG emissions information is not currently available as of our fiscal year-end. Additional time beyond our fiscal year-end timing is currently required for disclosure of GHG emissions.
Usefulness and benefits of disclosures contemplated by the Proposed 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?
We believe that the securities law standard of materiality should guide issuers in their approach to addressing these questions.
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?

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We appreciate the CSA issuing proposed guidance that generally aligns with the TCFD recommendations and proceeds in the same direction as other regulatory and standard setting bodies such as the Basel Committee on Banking Supervision and International Sustainability Standards Board. The Proposed Instrument would establish a set of standards for climate financial disclosures in Canada. Issuers who have not yet made such disclosures will prepare to do so for Scope 1 & 2 emissions, and the disclosure will improve comparability of reporting across issuers. As we note in our cover letter, mandatory Scope 1 & 2 GHG emissions disclosure requirements for large issuers are helpful in increasing the quality and quantity of companies' reporting on their emissions, and should improve data quality and data availability, which in turn helps banks with measuring and disclosing their financed emissions and setting interim emissions reduction targets. For Canadian banks that have joined the UN NZBA, meeting their net-zero commitments by 2050 requires client GHG emissions data. Mandatory disclosure requirements are helpful in improving data quality and data availability of client GHG disclosures.
Costs and challenges of disclosures contemplated by the Proposed Instrument
11. What are the anticipated costs and challenges associated with providing the disclosures contemplated by the Proposed Instrument?
Costs: Significant costs of data collection (e.g. ensuring data quality and coverage), talent (ESG subject matter experts who are continuously evolving their knowledge to keep pace with this ever-changing field), time and resources for application of complex methodologies and interpretation of results, external assurance (if required), external consulting and counsel, time and resource costs of developing new disclosures, shareholder engagement, etc. **Challenges:** Lack of processes and systems in place at some organizations or internal capabilities to conduct necessary analysis, lack of required data, under-developed methodologies and uncertainty related to quantification and disclosure approaches. For Canadian subsidiaries of multinational firms, there will also be a need for local resources to prepare the disclosures and ensure alignment with global ESG reporting. There is a risk of inconsistent interpretation by global teams.

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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?
We believe the metrics and targets recommendations are the most challenging to implement. As a result of the ongoing evolution of metrics and targets, we face additional challenges related to data availability, data quality, lack of standardized methodologies, lack of consistent classifications, diversified companies with partial attributions, etc. Due to the challenges noted, certain metrics lack transparency and comparability and thus are not as useful to stakeholders at this stage of maturity across industries. Scenario analysis under the strategy recommendation is also challenging, but we acknowledge this is not mandatory under the CSA proposal.
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 Proposed Instrument?
While we believe that disclosure expectations should apply to all issuers from a consistency and comparability standpoint, we strongly urge that a proportionate approach be adopted for smaller issuers and some form of accommodation provided (e.g., phased-in approach) in light of greater time and resource constraints faced by these issuers.
Guidance on disclosure requirements
14. We have provided guidance in the Proposed Policy on the disclosure required by the Proposed Instrument. Are there any other tools, guidance or data sources that would be helpful in preparing these disclosures that the Proposed Policy should refer to?
As climate disclosure is an evolving space, we believe the CSA Proposed Instrument should be periodically updated to reflect changes in TCFD guidance and other widely-accepted industry standards that may develop. We would ask that, as TCFD Guidance and other regulatory disclosure regimes continue to evolve, the CSA consider how to keep pace as regulatory duplication or misalignment of disclosure required by regulators will result in increased regulatory burden for issuers. We find the TCFD Knowledge Hub (https://www.tcfdhub.org/) to be a useful database of TCFD related resources.

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We strongly encourage the CSA to further consider climate-specific safe harbour protections, in addition to the existing forward looking information safe harbour, with respect to good faith approximations and assumptions in climate disclosures, as this would be beneficial to encourage robust climate disclosure. Issuers will be required to balance the request for useful, transparent disclosure against the fact that methodologies and data continue to evolve, and so specific climate safe harbour protection would be beneficial to issuers and would encourage more transparency.
15. Does the guidance set out in the Proposed Policy sufficiently explain the interaction of the risk disclosure requirement in the Proposed Instrument with the existing risk disclosure requirements in NI 51-102?
No comments at this time.
Prospectus Disclosure
16. Form 41-101F1 *Information Required in a Prospectus* does not contain the climate-related disclosure requirements contemplated by the Proposed Instrument. Should an issuer be required to include the disclosure required by the Proposed Instrument in a long form prospectus? If so, at what point during the phased-in implementation of the Proposed Instrument should these disclosure requirements apply in the context of a long form prospectus?
We would like to draw to the CSA's attention that NI 51-102F1 Part 1 for MD&A, and NI 51-102F2 Part 1 for the AIF require focus on material information, and also state that issuers do not need to disclose information that is not material. NI 51-107 as proposed by the CSA is not entirely subject to a materiality threshold resulting in the potential for uneven / mismatched disclosure. An issuer should only be required to include climate-related disclosure in a prospectus if such information is material.
Phased-in implementation
17. The Proposed 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 Proposed 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.

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Would the transition provisions in the Proposed Instrument provide reporting issuers with sufficient time to review the Proposed Instrument and prepare and file the required disclosures?
Our views on the one-year transition phase for non-venture issuers are connected to the location of the TCFD/CSA proposed disclosures. If non-material disclosures can remain in locations outside of financial reporting, we are generally comfortable with the proposed one-year transition. This timing appears appropriate given the market demand for this disclosure. However, any assurance requirements may require additional time for organizations to prepare for the release. We also believe a phased implementation for smaller issuers including Small and Medium Sized Banks is important because of the complexities involved. Disclosure requirements should not only be principles-based and subject to securities law materiality standards, but they should also address proportionality. Firms should be given flexibility in how climate change disclosures can be made. Industries face different climate-related issues, and they are in varying states of preparedness for climate disclosures (including established reporting practices, standards, and tools).
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 Proposed Instrument, particularly for venture issuers? If not, how could these concerns be addressed?
Venture issuers are typically smaller and new firms that may not have the resources to comply with new requirements on the same timeline as other issuers. A three-year phase in period (with the first filings due in 2026 for FY 2025) appears reasonable.
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?
No comments at this time.