Business Council of Canada

Submission to the Canadian Securities Administrators

Re: Proposed National Instrument 51-107 *Disclosure of Climate-Related Matters*

February 16, 2022

On behalf of the CEOs of 160 of Canada's leading companies, we are pleased to submit our comments on proposed National Instrument 51-107. Business Council of Canada (BCC) members are amongst the leading companies in Canada in terms of ESG performance reporting and climate disclosure. They recognize that Canadian industry should outline the actions it is taking to reduce greenhouse gases and demonstrate that comprehensive strategies are in place to address the risks and opportunities from climate change. Our members believe that the quality and robustness of climate related-data will increasingly be a determinant to access sufficient capital to invest in new technologies and/or to transition their businesses to succeed in a low-carbon future.

Below is a series of considerations intended to support an improved disclosure reporting regime in Canada.

TCFD Framework. The Task Force on Climate-related Financial Disclosures (TCFD) is rapidly becoming the gold standard internationally and is being used by more companies in Canada all the time. Accordingly, BCC members support the securities authorities' adoption of this disclosure framework, as amended, and believe that the four pillars referenced in the instrument (i.e. governance, strategy, risk management, metrics and targets) are appropriate.

Our view is that a robust and credible disclosure framework is one important element of a successful national climate plan. However, on its own it is not enough to facilitate a transition towards a net zero economy by 2050. A strong and consistent public policy framework is needed to ensure that companies can attract the investment that will allow them to prosper in the coming transition. Such a framework can also help companies reduce their exposure to transitory risk by providing an improved visibility of the country's economic and policy conditions.

Scenario Analysis. A number of Canadian companies already are undertaking limited scenario analysis for internal purposes, and in some cases reporting publicly on their business and operational risks under a specific scenario. But there is a lack of a common framework for creating such scenarios, thereby both limiting their usefulness and comparability across issuing companies. And given their somewhat speculative nature, some companies are only able to offer qualitative commentary, rather than useful numerical risk and opportunity assessments.

We support the proposed CSA approach to not require issuers to disclose scenario analysis at this time. However, this requirement should not prevent a company from completing a scenario analysis and including it in its filing if it chooses to do so. Scenario analysis is useful to companies and should be encouraged, but it is premature to make it mandatory for reporting issuers. We also believe that the national instrument can be updated in the future to include scenario analysis once there is greater scope to agree on common assumptions and a framework for scenario creation.

Although there is considerable work already underway, more time is needed to create scenarios, both international and domestic, that are relevant to Canada and appropriate for use by Canadian issuers. In addition to trying to agree on commonly used scenarios, more work is needed on the means to assess the physical, transition and legal risks and opportunities associated with these scenarios for firms in very diverse industries. BCC members continue to closely monitor the work led by OSFI and the Bank of Canada on climate scenarios and believe it can provide an important input to scenario planning in the future.

Completing a scenario analysis is a valuable exercise for a company and its board but concerns about legal risks remain. Consideration should be given to the Expert Panel on Sustainable Finance's recommendation of a 'safe harbour' provision to avoid the risk that using scenario analysis in financial documents could trigger potential liability related to forward-looking information. This would help safeguard those companies who choose to report their scenario analyses.

Canada's reporting community needs to continue to evolve and work towards scenario-based analysis. BCC will encourage the use of scenario analysis in Canada and welcomes the opportunity to collaborate with stakeholders to develop an appropriate basis for such work.

Scope 1, 2 and 3 emissions. Many issuing companies today can and are reporting on their scope 1 and 2 emissions; and indeed, it is already required by some federal and provincial reporting regulations. Although several companies are investigating how to accurately assess scope 3 emissions, it is decidedly more challenging. This is partly due to increasingly integrated supply chains and the reality that many reporting issuers are the suppliers or customers of other GHG-intensive firms. It is important that these firms work together to bring more clarity and consistency to identifying what constitutes scope 3 and how such emissions can be effectively monitored and reported to avoid double counting. There is also the very large consumer component associated with scope 3 from millions of households and many small businesses across the country, which creates challenges in terms of calculating scope 3 emissions accurately.

We recognize that investors, shareholders and financial markets will increasingly be asking for information on scope 3 emissions and comparing companies on that basis. As well, for many industries, full life-cycle analysis is key to understanding and planning the pathway to achieving net zero overall. Companies will need to understand to what degree their supply chain is carbon-intensive, as this could increase their risk, and costs, in the future.

Our view is that more work needs to be done to build a consensus around the key elements of scope 3 emissions for specific industries, and a materiality test that can support the reporting issuer. Otherwise, issuers and investors will be left to chase bits of information that have diminishing relevance.

Our recommendation is that the national instrument should propose that scope 1 and 2 emissions be reported. We would support expansion to scope 3 as methodologies improve, as companies work together to lessen overlap in emission accounting, and as the ability to assess and quantify the key elements of consumer impact/responsibility improve. Over time the goal of the national instrument should be to require disclosure on scope 3 emissions to ensure that Canada's reporting regime is compatible and consistent with international frameworks.

Metrics and targets. The CSA proposal should provide some guidance on a firm's obligation to outline the metrics they use to describe their progress in addressing climate change. The disclosure requirement also should not be overly prescriptive; it is up to management to define the parameters of the risks and their response to each. Many firms already have established GHG targets and their rationale for having them. On the other hand, targets can change over time depending on new learnings, more in-depth analysis and the state of technology development. Targets can be one outcome of a strategy to address climate risk, but the important element is how the board develops the strategy and intends to implement it.

Reporting issuers should be encouraged to adopt targets for GHG reduction where appropriate to the circumstances of the firm, and to describe how and under what conditions targets, if adopted, would be likely to change. Issuers should describe in more detail the metrics they will use to assess their performance against the objectives in their climate risk strategy. The national instrument should encourage issuers to disclose targets and metrics where they have been established.

Timing of implementation. BCC members broadly support the phasing approach proposed in the framework – 1 year for non-venture issuers and 3 years for venture issuers. Nonetheless, the one-year phase-in will be challenging even for larger firms with reasonably sophisticated reporting mechanisms already in place. For venture issuers, the CSA should support and encourage them to disclose climate risks ahead of the mandatory compliance date when possible.

Aligning the GHG emissions data disclosure requirements in the national instrument with existing financial reporting timelines (generally 1st quarter of the year) will be challenging as well, even for large firms. For GHG-intensive firms, they usually develop their end of year production data first and then derive their GHG data from this. This normally takes several months and federal and provincial regulatory timelines for GHG emissions reporting take this into account. For example, many companies are required to file data to the National Pollutant Release Inventory each year by June 1. Thus, the difficulty of aligning with the normal timing of financial reports. As well, for firms with operations outside Canada, their facilities may be in countries with less mature regulatory and reporting systems, which compounds the problem of having TCFD reporting align with normal financial reporting timelines.

Firms should have the option to provide a brief description of their climate risk reporting in their AIF and MD&A documents but should be permitted to provide the full report in a

separate document. One option would be to allow financial reports to include by reference the firm's GHG reporting in a later, separate document (e.g., an appendix; or inclusion in ESG or CSR reports). Another option would be to provide a multi-year transition period to provide non venture issuers sufficient time to amend their climate change related information gathering processes to meet the normal timing of financial reports.

Mandatory reporting. The Expert Panel on Sustainable Finance proposed a 'comply or explain' approach to implementation of the TCFD reporting regime in Canada, giving firms the option to attest that climate change does not pose a material risk to their business. We believe that is the appropriate approach in the first phase of Canada's TCFD implementation. The test of materiality remains important to any question of assessing climate risk. As well, it would serve Canada well to increase the number of firms providing disclosure over time, and retaining the comply or explain approach can encourage reporting. As we gain experience and more and more firms comply, the CSA can review the practical operation of the policy and consider making reporting mandatory.

Assurance and auditing. Audits of TCFD reporting should not be mandatory at this time. Rather than introduce a requirement for auditing, large GHG-intensive firms should continue to work with audit professionals, both within and outside the company, to improve methodologies and procedures that are suitable for climate risk reporting.

Professional competencies for auditing climate risk disclosure data are evolving and questions remain about whether there is sufficient capacity today to review all of the reports produced by issuers in Canada. Traditional auditing firms are endeavouring to develop this competence, but it is a different and more complex undertaking than financial auditing. Data quality can be audited, but other aspects of climate risk are better suited to 'assurance' practices. Likewise, it is possible to audit performance against a plan, in the sense of whether you have the checks and balances in place to achieve the plan. But it is decidedly more challenging for an outside reviewer to audit the plan itself or its adequacy to achieve desired goals. In fact, it is in area where reporting firms need to work with their internal audit team to improve practices over time. Nonetheless, there may be public and stakeholder expectations for issuers where their GHG emissions have a material financial impact or where it is seen to becoming the industry standard to do so.

Use of the GHG Protocol. BCC and its members are of the view that the GHG Protocol is the best tool for compiling and assessing GHG data. Most large Canadian companies have familiarity with the tool and feel that wide adoption of its use will promote transparency and comparability of data in Canada.

The CSA should create a default requirement of having disclosures in line with the GHG Protocol and industry standard specific items derived from the GHG Protocol (e.g., Partnership for Carbon Accounting Financials). If an issuer decides to use a proprietary

GHG disclosure methodology, that issuer should be obliged to describe the methodology and provide an explanation of why it is comparable to the GHG Protocol.

Minimizing Potential Conflict with Reporting Requirements in Other Jurisdictions. A number of our members operate in jurisdictions outside Canada and are subject to climate disclosure obligations in those countries. In particular, the Securities and Exchange Commission is currently undertaking consultations on potential rule-making for climate disclosure for companies operating in the United States. Differing requirements across borders would add to the cost and complexity of climate disclosure and potentially lead to less effective reporting. CSA should endeavour to ensure there is a minimum of inconsistency with reporting requirements in other jurisdictions.