



February 16, 2022

VIA E-MAIL

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

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Corporate Secretary and Executive Director,
Legal Affairs
Autorité des marchés financiers
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E-mail: comments@osc.gov.on.ca

Dear Sirs/Mesdames:

Re: **CSA Notice and Request for Comment - Proposed National Instrument 51-107 *Disclosure of Climate-related Matters***

TSX Inc. and TSX Venture Exchange Inc. (collectively, the “**Exchanges**” or “**we**”) welcome the opportunity to comment on the notice and request for comment published by the Canadian Securities Administrators (“**CSA**”) entitled Consultation Climate-related Disclosure Update and CSA Notice and Request for Comment - Proposed National Instrument 51-107 *Disclosure of Climate-related Matters* (the “**Proposed Instrument**”).



The Exchanges

The Exchanges are part of TMX Group Limited (“**TMX Group**”), a company that is strongly focused on supporting and promoting innovation, capital formation, good governance and financial markets in Canada and globally through its exchanges, including the Toronto Stock Exchange (“**TSX**”) and TSX Venture Exchange (“**TSXV**”) for equities, and the Montreal Exchange for financial derivatives. TSX is a globally recognized, robust stock exchange that lists growth-oriented companies with strong performance track records and is a top-ranked destination for global capital. TSXV is Canada’s leading global capital formation platform for growth stage companies looking to access public venture capital to facilitate their growth, and is an important part of Canada’s vibrant and unique capital markets continuum.

Climate Change Disclosure Framework

Climate change has become a pressing global issue as it represents a long-term threat to economic prosperity and growth. The impacts of a changing climate are becoming apparent from a societal, and, increasingly, financial perspective while global efforts to transition to a low-carbon economy are intensifying. There is growing demand therefore, for clear and consistent disclosures of material climate-related information to support capital-allocation decisions relating to transition activities and climate-related risks and opportunities. The Exchanges recognize that they play a critical role in supporting the Canadian capital markets and encouraging issuers to provide decision-useful information to their investors and other stakeholders by proactively articulating their approach to identifying, assessing, and managing relevant climate-related risks and opportunities.

The Exchanges are generally supportive of regulatory initiatives that facilitate climate-related disclosures that are aligned with the recommendations of the Financial Stability Board’s Task Force on Climate-Related Financial Disclosure (“**TCFD**”). The TCFD recommendations are globally recognized as the current leading framework for reporting climate-related risks and opportunities and have been endorsed by the Government of Canada. We are of the view that aligning Canadian disclosure requirements with the expectations of international investors will improve issuer access to global capital markets and that the use of a single internationally-recognized standard will, over time, result in the availability of high-quality, comparable and robust climate information from issuers while reducing the costs and market fragmentation for investors that are associated with navigating multiple disclosure frameworks. TMX Group supports the TCFD framework and recently published its first TCFD-aligned report. It was also a member of the coalition of Canadian private and public institutions (including the Government of Canada) that backed Canada’s successful offer to host the global headquarters of the newly formed International Sustainability Standards Board (“**ISSB**”). Our comments below are given bearing in mind the importance of and demand for material climate-related disclosures, while recognizing that producing these disclosures presents challenges and represents additional regulatory burden, especially for smaller issuers with limited resources.



In addition, we note that many large Canadian companies remain privately owned. We believe that the spirit of the TCFD recommendations would be better served if climate-related disclosure obligations applied regardless of whether these large companies are public or private. This would further the goal of increasing robust and comparable environmental disclosures for investors and help ensure that opting to raise capital on the public markets is not (further) disincentivized. Although we recognize that private company disclosure is generally outside of the direct purview of Canadian securities regulation, we encourage you to work with your intragovernmental counterparts to provide a comprehensive solution that addresses climate-related disclosure by large public and private companies.

Guidance on Disclosure Requirements

Assessing and reporting on climate-related matters is a challenging exercise. In order to deliver meaningful and comparable climate-related disclosures that align with the Proposed Instrument, issuers will need to build internal capabilities to collect and refine climate data as well as develop expertise and processes for incorporating climate-related issues within their decision-making and reporting structures. We would encourage the CSA to continually supplement the Proposed Instrument with regular, fulsome and industry-specific guidance and examples for issuers as to how they might approach the preparation of the required disclosures. The absence of practical and accessible guidance for issuers on developing a robust climate-related reporting and evaluation process may lead to “green-washing” and boilerplate disclosures that lack specificity or comparability and are therefore of limited value to investors.

Prospectus Disclosure

For consistency, the Exchanges are of the view that the disclosures required under the Proposed Instrument should be included in long form prospectuses. We believe that these disclosure requirements should apply to the prospectus disclosure once an issuer is subject to the disclosure requirements under the Proposed Instrument.

Phased-in Implementation

Subject to our comments below with respect to venture issuers, the Exchanges believe that the proposed transition provisions provide issuers with sufficient time to analyse the new requirements, make the appropriate internal assessments, and prepare and file the required disclosures. We note that the ISSB has published draft prototypes of global standards for general sustainability disclosures and climate-related disclosures. We urge the CSA to align the Proposed Instrument with the regime developed by the ISSB as appropriate to ensure better global alignment of reporting standards and so as to not impose additional costs and burdens on issuers.

GHG Assurance

We note that the Proposed Instrument does not require the GHG emissions to be audited. We agree with this approach and do not believe that it would be appropriate to require either TSX or venture issuers to bear the costs of providing assurance on GHG emissions reporting at this time.

Costs and challenges of disclosures contemplated by the Proposed Instrument

Although existing securities regulations in Canada require issuers to disclose the material risks (including those relating to climate) affecting their businesses, the scope of the Proposed Instrument requires issuers to understand and integrate climate-related issues into their strategic and financial decisions. Based on issuer feedback provided to us during recent meetings and during our complimentary one-on-one ESG Disclosure education sessions, we understand that many issuers have just begun to incorporate ESG matters into their strategies and operations and are still assessing the impact that such disclosure may have on investment and capital raising opportunities. In order to deliver meaningful climate-related disclosures that align with the Proposed Instrument, issuers will need to build specific internal capabilities to collect and refine climate data as well as develop expertise and processes for incorporating climate-related issues within their decision-making and reporting structures. Larger and more sophisticated issuers will likely take an iterative approach to integrate the new requirements into their mainstream reporting structures and many will rely on the guidance and specialized knowledge of third parties (such as consultants or external legal counsel) to ensure that they are producing high-quality disclosures that are compliant with the Proposed Instrument. Compliance with the Proposed Instrument will therefore require significant investments of time and resources by all issuers.

In light of the foregoing, we believe that the added regulatory burden from the Proposed Instrument will be proportionally greater for venture issuers, many of which do not have available capacity or resources to undertake the processes necessary to deliver these new disclosures. Further, the Exchanges have canvassed representatives of certain venture issuers for feedback on the Proposed Instrument and many issuers and/or their representatives indicated that they had, to date, received limited inquiries for climate-related disclosures and data from investors.

Based on this feedback, we encourage the CSA to consider limiting the application of the Proposed Instrument in one or more of the following ways:

1. ***Introduce accommodations for certain venture issuers:*** We urge the CSA to introduce certain accommodations into the Proposed Instrument for venture issuers. For example, the application of the Proposed Instrument could be limited to venture issuers that file an annual information form (“**AIF**”), which suggests a certain level of sophistication and ability to handle this added disclosure burden. Other metrics such as market capitalization or total enterprise value might also be appropriate criteria to determine which venture issuers are better positioned to respond to a mandated framework. We note that the suggestion to limit the application of the Proposed Instrument to venture issuers that file an AIF would have the added

benefit of ensuring that such issuers would not be required to include climate-related disclosures in their annual management's discussion and analysis ("**MD&A**") and could limit the required disclosures to their AIFs and management information circulars. Inclusion of such information in an MD&A has the potential to increase the cost of auditor review as auditors are bound to review all information contained within the document.

We recommend that the CSA exempt capital pool companies ("**CPCs**") from the Proposed Instrument. Climate-related disclosures would not be meaningful or material from a CPC as its operations are limited to identifying and evaluating assets or businesses which, when acquired, would qualify the CPC for listing as a Tier 1 or Tier 2 venture issuer.¹ We believe that extending such exemption to include non-operating or "shell" venture issuers would also be appropriate for these same reasons.

2. ***Introduce modified compliance timelines for venture issuers:*** The CSA should also consider providing venture issuers with the flexibility to set individual target timelines, within an appropriate range (such as five years) that is set out within the Proposed Instrument, for compliance with the new disclosure requirements. Alternatively, a phased-in approach could be adopted whereby certain requirements (such as those related to governance and risk management) must be implemented earlier than the other requirements. As indicated above, it is expected that complying with the Proposed Instrument will be costly and burdensome to many venture issuers. These options would provide venture issuers with the flexibility to implement the Proposed Instrument when appropriate for them, while being accountable to target timelines and an outside date. Small- and mid-cap issuers that are interested in attracting sustainability investing pools of capital would have the flexibility to disseminate climate disclosures on accelerated timelines if they wished.

Conclusion

The Exchanges appreciate your consideration of our comments and suggestions and we would be happy to discuss these at greater length with the appropriate representatives. Please do not hesitate to contact us if you have any questions regarding our comments.

Respectfully submitted,

"Loui Anastasopoulos"

Loui Anastasopoulos
President, Capital Formation and Enterprise
Marketing Officer

¹ For the same reason, we suggest that a similar exemption from the Proposed Instrument is made available to special purpose acquisition corporations listed on TSX.