CSA PROPOSE STANDARDIZED AND REINFORCED CLIMATE-RELATED DISCLOSURE — PRIMER ON PROPOSED NATIONAL INSTRUMENT NI 51-107 *DISCLOSURE OF CLIMATE-RELATED MATTERS*

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On October 18, 2021, just a few days prior to the opening in Glasgow of COP26, the U.N. Climate Change Conference of the Parties, the Canadian Securities Administrators (**CSA**) published for comment the Proposed National Instrument 51-107 *Disclosure of Climate-related Matters* (**NI 51-107**). Accompanying the draft instrument is the proposed Companion Policy 51-107CP *Disclosure of Climate-Related Matters* (**CP**), and two forms — Form 51-107A *Climate-Related Governance Disclosure* and Form 51-107B *Climate-Related Strategy, Risk Management and Metrics and Targets Disclosure*. The CSA have invited public comments on both NI 51-107 and the CP generally and specifically (through a set of 18 questions contained in the Notice of Consultation). The comment period will close on January 17, 2022.

Background

Increasingly, extreme weather and climate-related events across the globe are contributing to new financial risks and opportunities for communities, businesses, and organizations. Insufficient disclosure of such risks can facilitate poor investment decisions, asset losses, and the continuation of inefficient business practices. Consequently, there has been a growing pressure on regulatory authorities to mandate disclosure of businesses' approaches to their exposure to such climate-related risks.

In Canada, starting in 2010 with the publication of CSA Staff Notice 51-333 *Environmental Reporting Guidance*, the CSA provided issuers guidance on climate-related risk disclosure. More recently, in 2019, the CSA published the CSA Staff Notice 51-358 *Reporting of Climate Change-related Risks*, in which the regulators reiterated the importance of climate-related disclosures with additional guidance on such disclosures. These directions complemented the existing disclosure obligations contained in National Instrument 51-102 *Continuous Disclosure Obligations*, National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, National Instrument 52-110 *Audit Committees* and National Policy 58-201 *Corporate Governance*

Guidelines.

In the spring of 2021, the CSA conducted a targeted review of the climate-related disclosure by reporting issuers and analysed international regulatory developments on this front. In its review, the CSA found that issuers' climate-related disclosure are often not complete, consistent or comparable and that quantitative information was often limited and inconsistent. The staff also noted that issuers usually cherry picked their disclosure. The regulators also discovered that the sustainability reporting was often silo-ed and not necessarily integrated into periodic reporting. This prompted the CSA to publish for comments NI 51-107 and the CP.

Disclosure on Four Core TCFD Elements

With certain modifications described in the CP, NI 51-107 proposes new climate-related disclosure aligned with the four core disclosure elements of the June 2017 Recommendations (**TCFD Recommendations**) of the Task Force on Climate-related Financial Disclosures (**TCFD**). Over 1,500 organizations, including over 1,340 companies with market capitalization of $12.6 trillion now use the TCFD Recommendations as a component of their climate-related disclosure. Currently, regulators in New Zealand, the EU and the UK are moving toward requiring TCFD disclosure through legislation and regulation. The TCFD was established in 2015 by the Financial Stability Board, an international body that monitors and makes recommendations about the global financial system, to develop a set of voluntary climate-related financial risk disclosures.

Detailed Analysis of NI 51-107

What to Disclose?

Part 2 of NI 51-107 and Form 51-107A and Form 51-107B will require a reporting issuer to provide climate-related disclosure along the four core elements of the TCFD Recommendations plus greenhouse gas (**GHG**) emissions:

Form 51-107A	**Form 51-107B**			
Governance (mandatory)	**Strategy** (only if material)	**Risk Management** (only if material)	**Metrics and Targets (M&T)** (only if material)	**GHG Emissions** (comply or explain)

Describe board's oversight of climate-related risks and opportunities and management's role in assessing and managing climate-related risks and opportunities.	Describe climate-related risks and opportunities the organization has identified over the short, medium, and long-term and their impact on businesses, strategy, and financial planning.	Describe the organization's processes for identifying, assessing and managing climate-related risks and how such processes are integrated into the overall risk management.	• Disclose the metrics used to assess climate-related risks and opportunities in line with the issuer's strategy and risk management process. • Disclose the targets used to manage climate-related risks and opportunities and the issuer's performance against these targets.	Disclose issuer's Scope 1, 2 and 3 GHG emissions and the related risks or the issuer's reasons for not disclosing this information.

How to Disclose?

The specific requirements regarding the nature and form of disclosure for each of these disclosure elements are provided in Form 51-107A with respect to governance and in Form 51-107B with respect to strategy, risk management, M&T and GHG emissions. This disclosure must be provided in the following public disclosure documents:

- **Governance (Form 51-107A)**: In the proxy soliciting management information circular or, if the reporting issuer does not send a management information circular, its AIF or, if it does not file an AIF, its annual MD&A. The disclosure of governance related information is mandatory.
- **Strategy, Risk Management, M&T and GHG Emissions (Form 51-107B)**: In the reporting issuer's AIF, or if it does not file an AIF, in its annual MD&A. The disclosure of information related to strategy, risk management, and M&T is required if material.

Under item 4(a) of Form 51-107B an issuer would be required to disclose each of its Scope 1, Scope 2 and Scope 3 GHG emissions or explain why it has not done such disclosure on a "comply or explain" basis. For example, where an issuer has discussed its Scope 1 and Scope 2 GHG emissions, but not its Scope 3 GHG emission, the issuer would be required to explain why it has done so. The draft CP indicates that where an issuer elects to not disclose any GHG emissions, it may provide its explanations in respect of GHG emissions as a whole, as opposed to a separate explanation for each scope.

Further discussion on the carbon footprint calculations and scope of GHG emissions is provided below under the section "***Suggested Calculation Standard for the Carbon Footprint and Proposed Alternative GHG Emission Disclosure Regime***".

Who Will Disclose?

Roughly speaking, all reporting issuers, including venture issuers, will be subject to the reporting requirements of NI 51-107 (once adopted). Certain categories of reporting issuers will be excluded from these requirements such as:

- investment funds;
- issuers of an asset-backed security;
- designated foreign issuers or SEC foreign issuers;
- certain exchangeable security issuers used in cross-border M&A transactions; and
- certain credit support issuers and subsidiary entities the parent of which is either: (i) subject to NI 51-107 or (ii) has securities listed or quoted on a U.S. marketplace and in compliance with U.S. marketplace corporate governance disclosure.

When to Disclose?

After the instrument's enactment, the disclosure requirements will be phased in over a one-year period for non-venture issuers (primarily TSX mainboard listed issuers) and over a three-year period for venture issuers (primarily TSX-Venture and CSE listed issuers). The CSA anticipates that NI 51-107 will not come into force prior to December 31, 2022.

Assuming NI 51-107 becomes effective on December 31, 2022 and the issuer has a December 31 financial year-end, the following timeline would apply:

Issuer Type	Financial Year Covered	Deadline for Disclosure
Non-venture	FY ending December 31, 2023	March 2024
Venture	FY ending December 31, 2025	April 2026

In the event a venture issuer graduates to be a non-venture issuer during the period when the instrument only applies to non-venture issuers, the disclosure will not be required for the financial years in which the issuer was a venture issuer.

Suggested Calculation Standard for the Carbon Footprint and Proposed Alternative GHG Emission Disclosure Regime

The CSA suggests the use of the GHG Protocol Corporate Standard (**GHG Protocol**), an international recognized framework for measuring GHG emissions developed by the World Resources Institute and the World Business Council for Sustainable Development, to measure GHG emissions. If an issuer chooses to use a standard other than the GHG Protocol, it will need to explain how the standard used is comparable to the GHG Protocol in its AIF or, in the absence of one, in its annual MD&A.

An issuer will be able to incorporate its GHG emission data by reference to another document as long as it clearly identifies the reference document or excerpt of it and such information is filed on SEDAR prior to or concurrently with the new 51-107 disclosure.

The GHG Protocol classifies a company's emission into three scopes:

- **Scope 1**: These are direct emissions from owned or controlled sources, such as the company's facilities and the company's vehicles.
- **Scope 2**: These are indirect emissions from the generation of purchased of energy by the issuer, such as electricity, steam, heating and cooling.
- **Scope 3**: These are all indirect emissions (not included in Scope 2) that occur in the value chain of the reporting company and includes both upstream and downstream emissions.

Particularity of Scope 3 Emissions

Scope 3 emissions are usually hard to quantify, but often represent the biggest GHG emissions of an issuer. These emissions are divided into 15 categories.

Examples of upstream Scope 3 emissions categories are: purchased goods and services, capital goods, upstream transportation and distribution, waste from operations, business travel, employee commuting and upstream leased assets. Examples of Scope 3 downstream emissions categories are: downstream transportation and distribution, processing of sold products, use of sold products, end-of-life treatment of sold products, downstream leased assets, franchises and investments.

Alternative GHG Emission Disclosure Approach Proposed for Comment

With respect to the disclosure of GHG emissions, the CSA is consulting on an alternative approach that would only require issuers to make a Scope 1 GHG emissions disclosure (i.e., direct GHG emissions) either a) when that information is material, or b) in all cases. Scope 2 and Scope 3 disclosures would not be mandatory under the alternative approach, but the issuer would have to comply or explain.

No Scenario Analysis

Under the proposed NI 51-107, issuers would not be required to undertake scenario analysis using a Paris-aligned scenario such as the International Energy Agency's Net Zero by 2050 Scenario to assess the potential implications of climate-related risks and opportunities over the medium to long term. The CSA noted that the investment community expressed some concerns with the lack of standardization and comparability of scenario analysis without a standardized set of assumptions. From issuers' perspective, CSA also noted that there are concerns with the costs associated with developing scenario analysis. In this respect, the CSA chose to differ from the TCFD Recommendations, which endorse the use of scenario analysis.

The Road Ahead

The stated aim of proposed NI 51-107 is to standardize issuers' climate-related disclosures to allow for a better comparability of the climate-related risks and opportunities facing Canadian issuers. This will help investors better price the financial risks and the opportunities associated with climate change and the race to a net zero carbon economy.

While the formal enactment of NI 51-107 is in progress, the growing regulatory momentum may prompt certain issuer to act now. Effective climate-related disclosures can not only minimise legal risks such as litigation related to insufficient climate-related risk disclosures it can also provide competitive advantages such as a lower cost of capital, constructive engagement with shareholders, suppliers and employees, and strong relationships with external stakeholders.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.