NEI

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Alberta Securities Commission
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: Request for Comment, Proposed National Instrument 51-107 *Disclosure of Climate-related Matters*

With approximately C$11 billion in assets under management, NEI Investments' approach to investing incorporates the thesis that companies can mitigate risk and take advantage of emerging business opportunities by integrating best environmental, social and governance (ESG) practices into their strategies and operations. We commend the Canadian Securities Administrators (CSA) for proposing National Instrument 51-107 *Disclosure of Climate-related Matters* (the Proposed Instrument) and appreciate the opportunity to provide comments.

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The CSA is entirely correct in determining that the current state of climate-related disclosure from Canadian issuers is not meeting investor needs, and that we now require a mandatory approach. Further, the decision to base the disclosure framework on the Task Force on Climate-related Financial Disclosures (TCFD) reflects the fact that the TCFD has become the standard for climate-related disclosure and enjoys near-universal support from investors. We believe the Proposed Instrument, as it stands, would be an improvement on current disclosure practices but would not go far enough to ensure that the Canadian market keeps pace with best practice internationally, and contains several critical weaknesses that would ultimately prove fatal to its ability to meet investor needs. Falling short would bring risks to issuers as they compete for capital in an increasingly climate-aware marketplace and would hinder the ability of investors to adequately assess and mitigate the climate-related risks within their portfolios. That said, the Proposed Instrument does provide a solid foundation from which to build a world-class disclosure framework and the comments provided in this submission are intended to build on that foundation.

We ground these comments in our understanding of the larger task at hand – namely, to support the orderly transition to a low carbon economy in line with the goals of the Paris Agreement. A corollary to this global imperative is the objective of mitigating the systemic risks facing the financial system as a result of unmitigated climate change. The Proposed Instrument should, to the greatest degree possible, endeavour to provide a disclosure framework that best situates Canadian issuers and investors to address these existential risks. This means that climate-related data resulting from this framework should be complete, consistent, comparable, and credible. It is against this benchmark that the Proposed Instrument, and the disclosure that would flow from it, should be judged.

Key Gaps

In addition to providing responses to the specific questions raised in the consultation, we provide two key recommendations to address gaps in the Proposed Instrument.

- **National Instrument 51-107 Disclosure of Climate-related Matters should be reviewed regularly and no later than 2 years after it comes into force**

The CSA notes in its consultation that along with an increasing number of jurisdictions moving towards mandatory climate-related disclosure, the rise of the International Sustainability Standards Board (ISSB) points to a rapidly shifting landscape for climate-related disclosure. Alignment with international best practice will become a paramount concern and a real risk to Canadian issuers should the CSA standard not evolve with those developments. However, we cannot wait for these standards to emerge and eventually consolidate into a widely accepted best practice. The lack of reliable climate-related data in Canada is a material concern today, and the CSA should absolutely move forward with its Proposed Instrument in short order.

The evolving nature of our understanding of climate risk and the increasing sophistication of investor efforts to mitigate these risks points to disclosure paradigm that is not static. The CSA notes in the consultation that it will continue to monitor international developments, such as the ISSB, to further inform its approach. We

believe the CSA should go further than that and codify a regular review of the standards with the aim of harmonizing with internationally recognized standards. We recommend that the initial review should occur no later than two years after the Proposed Instrument comes into force. Absent this requirement, we fear that the Proposed Instrument could already be out of step with international expectations before it even comes into force for many companies.

- **Issuers should be required to disclose "transition plans" in accordance with the updated recommendations of the TCFD**

In October 2021, the TCFD issued an updated version of *Annex: Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures* that supersedes the 2017 version of the same Annex. In this updated annex, the TCFD introduced a new, but extremely pertinent recommendation that companies provide detail on how they intend to deliver on stated emission reduction commitments and targets – i.e., their "transition plans." This information is of central importance to investors, including NEI, who have made public net-zero commitments and are looking to ensure their portfolio aligns with a credible transition pathway. We note that the ISSB climate disclosure prototype makes disclosure of transition plans a required element. We believe both developments point to the need for the CSA to include a requirement for the disclosure of transition plans in the Proposed Instrument, specifically in the Strategy section of the proposed framework.

Comments on Specific Consultation Questions

Question #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?*

We do not believe the proposed approach to be appropriate. While we acknowledge that climate scenario analysis is an evolving tool that currently does not meet the bar of comparability or consistency, it is nevertheless a critical risk mitigation tool and one that we expect our most climate-risk exposed companies to be using. Through our engagement with companies in various sectors, we have seen that companies derive a tremendous amount of value from the process of using scenario analysis, and as investors, the knowledge that a company is undertaking scenario analysis exercises provides validation that they are adequately managing their risks.

Scenario analysis-related disclosure should be required on a comply or explain basis. We do not believe that scenario analysis should be mandatory at this time, but this should be revisited in the regular review of the Proposed Instrument as the field of scenario analysis is shifting rapidly. We do believe that issuers should be required to disclose if they have undertaken scenario analysis, and/or their rationale for not conducting scenario analysis. If they have undertaken scenario analysis, they should be required to provide enough detail on the assumptions of the scenario(s) so that investors may understand the nature of what they have done. Even the information that a company has definitively not performed scenario analysis is useful

information for investors and provides us with a data point that can be used to assess a company's response to climate risk or inform our engagement with a company.

Question #5: *The Proposed Instrument contemplates issuers having the option to disclose GHG emissions or explain why they have not done so. Is this approach appropriate? 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? Should disclosure of Scope 2 GHG emissions and Scope 3 GHG emissions be mandatory?*

Neither the proposed approach nor the alternative (to only disclose Scope 1 GHG emissions) are appropriate. Implementation of either approach would undermine a key benefit of mandated disclosure – the universal availability of GHG emissions data. Investors require accurate GHG data in order to address the climate-related risks in their portfolio. Issuers should be required to disclose Scope 1 and Scope 2 GHG emissions. This would align the Proposed Instrument with the TCFD recommendations, which specify that all issuers should disclose Scope 1 and Scope 2 GHG emissions regardless of materiality considerations. As the issue we are trying to address is systemic, the materiality of emissions at the issuer level is a secondary concern.

Disclosure of Scope 3 emissions should be required if the issuer has assessed Scope 3 emissions to be a material part of their emissions footprint. While we understand that methodologies for assessing Scope 3 emissions continue to evolve, the true value of a Scope 3 emissions assessment is not in the number itself. Rather, it is a lens with which companies, and investors, can view the company's strategy through. If, for example, a company's strategy is predicated on the production of a commodity or product that has significant emissions associated with its use, then that company and its investors are exposed to direct regulatory and reputational risks related to the company's Scope 3 emissions. In order to provide comfort to issuers who choose to disclose Scope 3 emissions, it might be suitable to enact a safe harbour provision specifically for Scope 3.

We note that under the Partnership for Carbon Accounting Financials (PCAF) Global GHG Accounting and Reporting Standard for the Financial Industry, financial institutions (including several Canadian banks) are required to disclose absolute Scope 3 emissions in a phased approach, starting with the highest emitting sectors in 2021, and all sectors by 2026. We believe the international trend is towards the disclosure of Scope 3 emissions, and the CSA should look to align itself with this trend.

Question #6: *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? 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? 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?*

The use of the GHG Protocol should be mandated for all issuers, with no flexibility to use alternative reporting standards. A core objective of mandatory climate-related disclosure is to provide comparable data. As such, it is in the best interests of all actors to utilize a consistent, and mandated, standard.

The GHG Protocol is the most widely used methodology and other methodologies utilize the GHG Protocol as the foundation for their work. For example, the Partnership for Carbon Accounting Financials (PCAF) Global GHG Accounting and Reporting Standard for the Financial Industry, uses the GHG Protocol in its methodology. As PCAF is emerging as the central standard used by the financial sector to assess its financed emissions, aligning mandatory reporting requirements with the GHG Protocol will provide important consistency.[1]

Question #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 would like to see the assurance of GHG emissions reporting to become the standard expectation, much like audited financial statements. At the very least it should be recommended as best practice for Scope 1 and Scope 2 GHG emissions and explanations should be required if assurance is not provided for sectors with high emissions. Independent assurance on the accuracy, completeness and consistency of GHG emissions data would be beneficial to both internal decision-making and for investors and other external stakeholders.

Question #11: *What are the anticipated costs and challenges associated with providing the disclosures contemplated by the Proposed Instrument?*

It is reasonable to anticipate that issuers will have to bear costs associated with preparing the disclosures and investors will have to bear the costs associated with understanding the disclosures. For most issuers, this should not be overly onerous or complex. Regardless of whether the CSA moves forward with mandatory reporting, these companies will face the same asks from investors so there is no escaping the imperative to report. What the Proposed Instrument can do is provide a standardized reporting framework that will create efficiencies by allowing for collaborative approaches from industry associations and others who can potentially provide standardized tools to aid disclosure. From a societal perspective, the potential cost of not transitioning to a low carbon economy greatly outweighs any issuers' compliance or legal costs.

Question #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?*

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[1] The GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard can be utilized to report on scope 3 emissions. The PCAF standard specifically utilizes Category 15 of this standard to measure financed emissions and disclosure of financed emissions should be guided by the same methodology.

There is potential for confusion. Existing risk disclosure requirements are subject to a materiality threshold whereas the required risk management under TCFD is not and is focused on process rather than assessment of specific risks. Descriptions of specific climate related risks (and opportunities) identified and potential impacts on business are required under the strategy disclosures in respect of TCFD. This should be clarified in the Proposed Policy.

Question #17: *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? 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?*

We agree, in principle, that a phased approach is appropriate, and that venture and non-venture issuers should face different timelines. It is reasonable to assume that smaller issuers will require more lead time to fully comply with the disclosure expectations. However, we feel that the proposed approach is too lenient in respect of non-venture companies and would result in an unnecessarily long delay in reporting (i.e. 2026). Time is not on our side, and we are already behind other jurisdictions when it comes to the state of our climate-related disclosure. We propose an alternative, phased approach that would alleviate investor concerns and align with the approach recommended by the Expert Panel on Sustainable Finance.

We believe that *all* issuers should be required to disclose on the governance and risk management pillars of the Proposed Instrument in the first year, while non-venture issuers should be required to have full implementation within one year of the effective date (as recommended by the CSA). Venture issuers would be expected to fully implement all disclosure requirements after a three-year period (in line with the current CSA recommendation).

We recognize that smaller public companies with less resources may require additional time to fully adopt the proposed climate-related disclosure regime. The Proposed Instrument, however, does not encourage non-venture issuers to implement the disclosure requirements in an incremental and iterative manner wherein they can build on work year over year. Instead, the proposed approach would only delay the full brunt of implementation without the benefit of learning from the implementation of easier pillars. Therefore, we do not agree with the CSA's proposed approach with respect to venture issuers. The Proposed Instrument's approach of allowing a three-year period before venture issuers are required to make any disclosures creates too long of a gap where no information is mandated to be made available to investors.

A phased approach would align with the recommendations of the Expert Panel, which recognized the need to phase in disclosure requirements based on the complexity of the task at hand and based on the size and maturity of businesses. The governance and risk management pillars of the Proposed Instrument are the foundation that the other pillars will be built on and do not need a materiality assessment to guide disclosure. These are elements that an issuer either has or it doesn't – thus the reporting burden is limited

to capturing current practice. We do not feel this is an onerous ask but it would provide valuable disclosure for investors in lieu of the fully implemented framework.

Question #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?*

The Sustainability Accounting Standards Board (SASB) has developed 77 industry-specific standards that outline and provide guidance for each industry on the minimum set of likely financially-material sustainability topics and metrics that companies ought to regularly disclose. Their rapid and global adoption is due in part to their emphasis on financial materiality and industry-specific information related to risks and opportunities most likely to affect a company's financial condition (*i.e.*, its balance sheet), operating performance (*i.e.*, its income statement), or risk profile (*i.e.*, its market valuation and costs of capital) in the near, medium or long term. The SASB framework also allows for the issuer to determine the material industry-specific metrics, given its unique circumstances.

During 2021, SASB merged with the IIRC to create the Value Reporting Foundation. In November 2021, it was announced that the Value Reporting Foundation would also merge with the Carbon Disclosure Standards Board and all three would be rolled into the IFRS as part of the establishment of the new International Sustainability Standards Board (ISSB). The ISSB has, similar to the CSA, focused initially on climate-related disclosure with a view to expanding to broader ESG concerns in the future. We believe the CSA should work to align itself with the ISSB to the degree possible. As the SASB standards will be a core foundation for the ISSB work, aligning expectations with SASB in the interim would be wise.

Alignment with both SASB and TCFD does not absolve companies of the responsibility to determine for themselves what their material risks are, nor should it be a restriction on what a company decides to report on. Investors need to understand how a company is identifying, measuring and managing its ESG risks and opportunities in order to properly assess its value over the long-term. In other words, the process a company utilizes to determine what information is material enough to disclose is also a critical piece of information for investors. Until specific ISSB standards are developed, SASB standards can help companies and investors identify and more fully understand financially-material sustainability risks and opportunities.

While each company's circumstances may differ, the board of directors and management should be accountable for assessing the long-term impact of ESG risks and opportunities on the company's operations. This materiality assessment and discussion on the methodology used to perform such an assessment should be a part of disclosure requirements. This is already common practice in the Canadian market and should be mandated as part of any ESG disclosures.

Finally, we would note that the Taskforce on Nature-related Financial Disclosure is working on a disclosure framework to address biodiversity concerns. We believe that biodiversity loss is a systemic risk comparable

to climate change (and inextricably connected to climate change) and anticipate that investors and issuers alike will increasingly focus on this issue in the near future. As such, the CSA should be intentional in looking to align with the outcomes of the TFND process.

Thank you again for the opportunity to provide our comments on the Proposed Instrument. As indicated above, we are extremely supportive of the CSA's decision to mandate climate-related disclosure. The Proposed Instrument provides a good foundation to build from, but absent the changes we note in our submission we are concerned that the CSA will fall short of its objective to improve climate-related disclosure and provide investors with decision-useful information. If you have any questions about this submission, please don't hesitate to reach out to me directly.

Best regards,

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