January 13, 2022

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: CSA Request for Comment – Proposed NI 51-107 Disclosure of Climate-Related Matters

FAIR Canada is pleased to provide our comments and recommendations on the above-referenced Proposed National Instrument and Companion Policy, regarding disclosure of climate-related matters (Proposal).

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for the advancement of the rights of investors and financial consumers in Canada. It advances its mission through outreach and education, public policy submissions to governments and regulators, and proactive identification of emerging issues. FAIR Canada has a reputation for independence, thoughtful public policy commentary, and repeatedly moving the needle in the interests of retail investors and financial consumers.[1]

General Comments

As noted in the comprehensive CSA Notice that accompanies the Proposal, there is a growing global recognition of the need for mandatory climate-related disclosures, designed to produce "consistent, comparable and decision-useful information" for investors. The lack of common disclosure standards creates numerous risks for investors and our capital markets, including concerns about whether there is appropriate and comparable climate-related information to inform investment decisions.

Introducing such disclosure requirements for reporting issuers (other than investment funds) is a necessary first step in addressing these concerns. We commend members of the CSA for being among the first securities regulatory authorities to propose such requirements, and for building on the climate change-related risks published in 2019.

We also support the use of the disclosure framework recommended by the Financial Stability Board's Task Force on Climate-Related Financial Disclosures (TCFD), including organizing disclosures around the four core elements of governance, strategy, risk management, and metrics and targets.

The CSA's Proposal is important for institutional and retail investors alike, who are increasingly focusing their investment decisions based on climate-related and other environmental, social and governance (ESG) factors. Most important, the Proposal lays the foundation for necessary further work aimed specifically at meeting the needs of retail investors and protecting them from misleading information and "greenwashing."[2]

[1] Visit www.faircanada.ca for more information.
[2] The October 2021 Responsible Investment Association survey of Canadian investors found that 73% of respondents showed interest in responsible investing, up from 60% in 2018. When asked, "How concerned are you about greenwashing in the investment industry?" 78% said they are "very concerned" or "somewhat concerned".

While we appreciate that the Proposal is necessarily focused on reporting issuers that are not investment funds, we encourage the CSA to consider further initiatives aimed at developing disclosure guidelines and/or requirements for investment funds in the near future, both at the asset management and product level.[3]

These requirements would be developed in line with the workstream being conducted by IOSCO's Sustainable Finance Taskforce (STF), regarding asset managers' disclosures and investor protection issues.[4]

While this STF workstream is referenced in this CSA Notice, it would be helpful to specify the CSA's plans with respect to developing such requirements. In this regard, we recommend following the example set by the UK Financial Conduct Authority (FCA)'s recently released Policy Statement on enhancing climate-related disclosures by asset managers at the entity and product level.

Specific Comments

The Comply or Explain Approach

A "comply and explain" approach relating to certain disclosures recommended by the TCFD is appropriate to address the practical difficulties in producing some of the proposed disclosures. However, to prevent explanations for non-disclosure from becoming boilerplate and, thereby, reducing the effectiveness of the disclosure regime, we recommend the following enhancements to those elements of the Proposal that permit a comply and explain approach:

- Explanations for non-disclosure should include planned actions, if any, the reporting issuer intends to take to be able to make those disclosures in the future, together with appropriate timeframes.

- Where such explanations point to gaps in underlying data or methodological challenges, reporting issuers should specify why those gaps or challenges could not be filled using proxy data or assumptions.

[3] According to the Responsible Investment Association, "A growing number of retail responsible investment products (including mutual funds and ETFs) have hit the market. During the full year 2020, according to data from Morningstar, a record 44 RI funds were launched in Canada. In just the first nine months of 2021, 63 new RI funds were introduced in Canada, bringing the total number of RI funds to 208."
[4] IOSCO, Sustainable Finance and the Role of Securities Regulators and IOSCO Final Report (April 2020).

The above two enhancements are aligned with the approach taken by the FCA in its recent rules regarding climate-related disclosures for issuers (December 2020) and asset managers (December 2021).[5]

Finally, we agree that it may not be appropriate at this time to mandate the disclosure of scenario analysis information contemplated by the TCFD recommendations for all reporting issuers. However, some reporting issuers may have the ability to produce useful scenario analysis information. For others, their ability to do so may improve over time. As such, rather than not requiring any scenario analysis, we would recommend that issuers be given the option to provide this disclosure or explain why they have not done so.

Useful Decision-Making Information for Retail Investors

Question 9 of the Proposal asks, "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?"

From the perspective of retail investors, information about the potential risks to the reporting issuer and how those risks are being managed are very important. Detailed metrics such as Green House Gas (GHG) emissions may be less so.

In terms of the required disclosure, we would recommend, to the extent possible, adopting a plain language, layered approach. This would entail providing high-level summary information with a subset of more detailed information. Such an approach may help address the potential for information overload.

Audit Requirement

Question 7 in the Proposal notes that the Proposed Instrument does not require GHG emissions to be audited and asks whether there should be a requirement for some form of assurance on such reporting.

We believe, to the extent that GHG emissions are disclosed publicly, there should be some form of assurance. Such an assurance would provide a measure of reliability for investors using this information to make investment decisions.

Conclusion

[5] FCA, Policy Statement: Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations (December 21, 2020) and Enhancing climate-related disclosures by asset managers, life insurers and FCA-regulated pension providers (December 17, 2021).

We applaud the CSA for taking this initiative and putting Canada ahead of many of its peers on this increasingly urgent issue. We look forward to contributing our thoughts to future regulatory proposals as the next stages in this important policy development unfold.

We thank the CSA for the opportunity to provide our comments in this submission. We would be pleased to discuss our submission should you have questions or require further explanation of our views on these matters. Please contact me at jp.bureaud@faircanada.ca.

Sincerely,

Jean-Paul Bureaud,
Executive Director