Summary of Submissions to Canadian Securities Administrators on Proposed National Instrument 51-107 Disclosure of Climate-related Matters

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ABOUT THE CANADA CLIMATE LAW INITIATIVE

The Canada Climate Law Initiative examines the legal duties of corporate directors, officers, pension fiduciaries, and asset managers to consider, manage, and report on climate-related financial risks and opportunities, advancing knowledge on effective climate governance practice. It is a collaboration of the University of British Columbia (UBC) Centre for Business Law and Osgoode Hall Law School, York University; and is the Canadian partner of the global Commonwealth Climate and Law Initiative, founded at Oxford University, United Kingdom.

The Canada Climate Law Initiative acknowledges that the UBC Point Grey campus is situated on the traditional, ancestral, and unceded territory of the xwməθkʷəy̓əm (Musqueam) and is committed to working in partnership with Indigenous Peoples on effective climate governance.

ACKNOWLEDGMENT

This research was made possible by the generous financial support of the Ivey Foundation. CCLI accepts responsibility for any issue regarding accuracy of the data.

Executive Summary

The Canadian Securities Administrators (CSA) received 131 submissions on proposed National Instrument 51-107 Disclosure of Climate-related Matters (NI 51-107) during the four-month public consultation period, of which 94% were from organizations and 6% were from individuals.

In total, 27 investors made submissions (21 investors and 6 organizations that are both investors and issuers), of which 96% are institutional investors. They collectively have more than $21 trillion in assets under management.

In addition to the six issuer/investors, there were 23 submissions were made by issuers, which comprised 17.6% of total submissions received, 18 from the energy sector and one issuer from each of mining, automotive, agricultural, commodities, and the professional services sector.

16 industry associations made submissions, three from the energy sector, including oil and gas, three from the mining sector, eight from financial services organizations, one from a forestry association, and one from a real estate industry association.

64 (48.9%) of submissions came from a range of third parties, including foundations, accounting bodies, accounting firms, law firms, actuarial organizations, financial services providers, consultants, institutes, academic organizations, and civil society organizations.

There was overwhelming support for aligning Canadian securities law climate-related disclosure requirements with the Financial Stability Board's Taskforce on Climate-related Financial Disclosures (TCFD); however, there a few areas where submissions differ from the details under the TCFD framework, which CCLI delves into in the analysis.

29 submissions requested that the CSA amend proposed NI 51-107 to require disclosure of transition plans including disclosure of interim and final targets towards net-zero emissions, disclosing annual progress in meeting targets, and information on how the issuer intends to deliver on its targets. These submissions are not surprising given that 130 countries announced their commitment to net-zero emissions by 2050 at COP 26; and the Glasgow Financial Alliance for Net Zero (GFANZ), which represents 450 major financial institutions controlling assets of over $130 trillion, is committed to mobilizing capital by driving upward convergence around science-based net-zero transition plans.

51 submissions commented on the CSA's proposal to require disclosure of governance and risk management of climate-related matters regardless of materiality, with 29 (57%) submissions in favour. 88% of investors support the requirement to disclose climate-related governance and risk management regardless of materiality.

Of the 104 submissions that addressed disclosure of Scope 1 emissions, 82 (79%) support mandatory disclosure of Scope 1 emissions for all issuers, rather than the comply-or-explain approach. 100% of investors that addressed this issue support mandatory disclosure of Scope 1 emissions.

Of the 104 submissions that addressed disclosure of Scope 2 emissions, 71 (68%) submissions support mandatory disclosure of Scope 2 emissions for all issuers, rather than a comply-or-explain approach.

The majority of submissions recognized the importance of disclosure of Scope 3 emissions as part of climate disclosures. Overall, 43 submissions support Scope 3 emissions disclosure where Scope 3 emissions are material. 28 (27%) submissions are in favour of mandatory disclosure of Scope 3 emissions, 24 (23%) are in favour of the CSA's comply-or-explain approach, 15 (14%) support disclosure of Scope 3 emissions where material, and 37 (35%) of the submissions are not in favour of requiring disclosure of Scope 3 emissions at this time.

53 submissions support making the GHG Protocol the reporting standard.

51 submissions commented on the CSA's proposal to require disclosure of governance and risk management of climate-related matters regardless of materiality, with 29 (57%) submissions in favour and 22 (43%) not in favour. Six of the 29 in favour submissions recommended that all four TCFD pillars of governance, strategy, risk management, and metrics & targets should be disclosed, regardless of materiality, and the disclosure itself would then provide information on what is material to investors.

23 submissions are in favour of embedding the disclosure in the annual financial reporting documents, including MD&A or AIF. Of the investor submissions that commented, 90% are in favour of embedding climate-related disclosure in the annual financial reporting. A number of submissions objected to just allowing reference in the financial reporting documents to another document, expressing concern about the accountability and comparability of disclosure outside of documents that require audit assurance and officer certification.

21 submissions discussed the need to improve climate-related disclosure through reconciliation and partnership with Indigenous Peoples.

Six submissions discussed the importance of recognizing a just transition to net-zero emissions as key to protecting Canadian investors and other stakeholders.

There are two particularly strong messages across the board - all users of financial statements need to have reliable, relevant, clear, and comparable information on climate-related risks and opportunities, and it is important that the CSA act as quickly as possible to create effective and clear disclosure standards that align with international regulatory developments and allow Canadian issuers to effectively compete in domestic and global capital markets.

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Canada Climate Law Initiative[1]

March 2022

1. Introduction and overview

The Canada Climate Law Initiative (CCLI) analyzed the submissions made to the Canadian Securities Administrators (CSA) on proposed National Instrument 51-107 Disclosure of Climate-related Matters (NI 51-107).[2] CCLI found that there was overwhelming support for creating national disclosure standards on climate-related matters, and this summary analysis report focuses on the responses to policy choices that the CSA asked market participants to consider, taking note also of significant other recommendations made to the CSA in the submissions.

The CSA received 131 submissions during its four-month public consultation period, of which 123 (94%) were from organizations and 8 (6%) were from individuals. Of the total submissions received, 8 submissions did not answer any of the questions posed by the CSA on NI 51-107 or focused narrowly on one issue; and one submission was a duplicate submission by the same organization.[3] The remaining 122 submissions answered some or all of the questions posed by the CSA. Of these submissions, 117 (96%) were from organizations and 5 (4%) from individuals.

Breaking the submissions down by type of organization, 21 (16%) submissions came from investors, the vast majority (96%) institutional investors.[4] Six (4.6%) of the submissions were made by organizations that are both issuers and investors.[5] In total, the 27 investors have more than \$21 trillion in assets under management.

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[1] Dr Janis Sarra, Professor of Law, University of British Columbia; Michael Irish, LLM candidate, Peter A Allard School of Law, University of British Columbia; and Jenaya Copithorne, JD candidate, University of Toronto Faculty of Law.

[2] CSA, 51-107 - Consultation Climate-related Disclosure Update and CSA Notice and Request for Comment Proposed National Instrument 51-107 Disclosure of Climate-related Matters, (18 October 2021), 51-107 - Consultation Climate-related Disclosure Update and CSA Notice and Request for Comment Proposed National Instrument 51-107 Disclosure of Climate-related Matters | OSC (hereafter CSA Consultation). The consultation period ended 16 February 2022.

[3] Nine submissions were excluded from most of the summary data analysis where they did not directly address any of the questions raised by the CSA, but are included in the qualitative analysis. They are: The Institute of Internal Auditors, which recommended that governance-related disclosures should include information about the role of internal auditors in effective governance; J Durward submission, which suggested that small companies be exempted from the proposed instrument; the Municipal Natural Assets Initiative, which recommended including disclosure on biodiversity and risks to ecosystems; Broadridge Financial Solutions, which explained how it works to improve the distribution of issuer and shareholder communications; CIBC 2nd submission replicating another submission from CIBC; B Downing, suggesting that junior exploration/resource companies be exempted from the instrument; Arrowmaker Advisory & Accounting, which provided a short general statement of support for the instrument and did not address any CSA questions; ASTM International, offering to provide a document developed by their organization in financial disclosures; and Friends of Science Society, which took the position that climate change does not pose a serious threat and companies should not be required to report.

[4] Dollar figures are Canadian dollars unless otherwise noted in the text. CCLI made considerable effort to eliminate any duplicate counting of assets under management.

[5] Their submissions are summarized in this report under a separate total from investors or issuers.

In addition to the six issuer/investors, there were 23 submissions were made by issuers, which comprised 17.6% of total submissions received. Of the issuer submissions, 18 were from the energy sector and one issuer from each of mining, automotive, agricultural, commodities, and professional services sector.

16 industry associations made submissions, 12.2% of all the submissions to the CSA. They represent the following sectors: three submissions from the energy sector, including oil and gas; three submissions from the mining sector, eight submissions from financial services organizations, one submission from a forestry association, and one from a real estate industry association.

There were 64 (48.9%) submissions from a range of third parties, including foundations, accounting bodies, accounting firms, law firms, actuarial organizations, financial services providers, consultants, institutes, academic organizations, and civil society organizations. Table 1 sets out the breakdown of submissions by type of stakeholder.[6]

Table 1

Commentor Type	# of Submissions	% of Total
Investors	21	16.03
Issuers/Investors	6*	4.58
Issuers	23	17.56
Industry Associations	16	12.21
Third Parties	64	48.85

* A 7th was a duplicate submission that is removed from the summary data analysis

In terms of methodology for this summary, CCLI identified 12 key policy issues and created excel data sheets to capture the content of all the submissions on these policy points, broken down by investors, issuer/investors, issuers, industry associations, and third-party submissions. Data were summarized by number and percentage in terms of the views of these stakeholder groups on specific policy issues, also recording where they did not comment on an issue. We were able to generate 52 data pie charts to illustrate the breakdown of submissions by issue. All the submissions were also analyzed for qualitative insights.

This report summarizes the submissions by specific policy issue and type of stakeholder, as well as providing direct quotes from submissions that were particularly insightful or that offered a perspective reflected in a number of submissions.

Most of the 131 submissions did not comment on all questions posed by the CSA. At a very high level, Table 2 summarizes the number of submissions that supported 13 key recurring policy issues addressed. The deeper delve into the detail is contained in the rest of this report.

[6] All of the submissions can be found on the Ontario Securities Commission website.

Table 2

Recommendation	**Investors**	**Issuers**	**Issuer/Investors**	**Industry Associations**	**Third Parties – accounting, foundations, think tanks, etc**
Support TCFD-aligned disclosure (including with respect to scenario analysis)	19	7	3	4	46
Require disclosure of transition plans towards net-zero GHG emissions	13	0	2	1	15
Disclose governance and risk management of climate-related matters regardless of materiality	12	0	2	1	14
Mandatory Scope 1 GHG emissions disclosure	20	11	4	10	37
Mandatory Scope 2 GHG emissions disclosure	19	8	4	9	31
Scope 3 GHG emissions disclosure where material (includes both mandatory Scope 3 disclosure and disclosure where material support)	14	2	3	2	22
Require GHG Protocol as the reporting standard	14	11	4	3	21
Include venture issuers in disclosure requirements under NI 51-107	6	3	2	2	7
Require climate-related disclosure in annual financial reporting documents	9	2	0	3	9
Temporary safe harbour for Scope 3 disclosures if best available methodology used and with officer certification	9	0	2	2	10
Mandatory scenario analysis disclosure	8	1	1	2	19
Require material climate-related disclosure in long-form prospectuses	6	2	2	2	15
Work in partnership with Indigenous Peoples to enhance climate-related disclosures	4	3	1	2	11

2. Mandatory TCFD-aligned disclosure

The submissions were overwhelming in support of alignment of Canadian securities law disclosure requirements with the Financial Stability Board's Taskforce on Climate Related Disclosures (TCFD) framework. However, some submissions supported the CSA's decision to diverge from the TCFD with respect to scenario analysis and greenhouse gas (GHG) emissions, as discussed below.

3. The CSA should require issuers to disclose transition plans towards net-zero or low-carbon emissions as part of mandatory disclosure

After the CSA published proposed NI 51-107 and prior to the end of the consultation period, the TCFD recommended disclosure of key information from organizations' plans for transitioning to a low-carbon economy and issued guidance on disclosing transition plans.[7] The TCFD recommends that issuers in countries that have made a net-zero commitment (such as Canada) describe their plans for transitioning in alignment with national goals.[8]

Notwithstanding that transition plans are not included in the proposed national instrument, 29 submissions requested that the CSA amend proposed NI 51-107 to require disclosure of transition plans, including disclosure of interim and final targets towards net-zero emissions, annual progress in meeting targets, and information on how the issuer intends to deliver on its targets.

These submissions are not surprising given that 130 countries announced their commitment to net-zero emissions by 2050 at COP 26. Further, the Glasgow Financial Alliance for Net Zero (GFANZ), which represents 450 major financial institutions controlling assets of over US$130 trillion, is committed to mobilizing capital by driving upward convergence around corporate and financial institution net-zero science-based transition plans.[9] GFANZ's 2021 Call to Action includes economy-wide net-zero targets aligned to 1.5 degrees Celsius, reform of financial regulations to support the net-zero transition, mandatory net-zero transition plans for companies and financial institutions, and phaseout of fossil fuel subsidies.[10] This recommendation also aligns with the Minister of Environment and Climate Change's announcement that the government will establish the country's 2030 Emissions Reduction Plan by the end of March 2022.[11]

Of the investor submissions, 13 (62%) of investors recommended including mandatory disclosure of transition plans as part of NI 51-107, and 8 (38%) dd not comment, as illustrated in Figure 1.

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[7] TCFD, *Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures* (October 2021), at 4, 2021-TCFD-Implementing_Guidance.pdf (bbhub.io); TCFD, *Guidance on Metrics, Targets and Transition Plans* (October 2021), 2021-Metrics_Targets_Guidance-1.pdf (bbhub.io) (TCFD Guidance).

[8] TCFD Guidance, note 7 at 39.

[9] Glasgow Financial Alliance for Net Zero, "Our progress and plan towards a net-zero global economy" (November 2021), at 5, GFANZ-Progress-Report.pdf (bbhub.io) (GFANZ). Financial institutions can join GFANZ by joining one of the following sector-specific alliances: the Net-Zero Banking Alliance, the Net Zero Asset Managers initiative, which has 236 signatories with US$57.5 trillion in assets under management (2022), https://www.netzeroassetmanagers.org/; the Net-Zero Asset Owner Alliance, which has 71 institutional investor signatories with US$10.4 trillion assets under management, Net Zero Asset Owner Alliance (2022) UN-convened Net-Zero Asset Owner Alliance – United Nations Environment – Finance Initiative (unepfi.org); the Paris Aligned Investment Initiative, with 118 investors representing $34 trillion, the Net-Zero Insurance Alliance, which has 20 members that have 11% of world premium volume and over US $7 trillion in assets under management, Net-Zero Insurance Alliance – United Nations Environment – Finance Initiative (unepfi.org); the Net Zero Financial Service Providers Alliance (NZFSPA) (3 November 2021), Committed to Net Zero - Net Zero Financial Service Providers Alliance (netzeroserviceproviders.com).

[10] GFANZ, note 9 at 17.

[11] Government of Canada, "Net Zero by 2050", Net-Zero Emissions by 2050 - Canada.ca.

Of the six issuer/investor submissions, two recommended disclosure of transition plans and the others did not comment (Figure 2). None of the issuer submissions commented on transition plans, other than the two issuer/investors.

Of the third-party submissions 15 (27%) recommended disclosure of transition plans, with 14 in favour and 1 partly in favour, and 40 not commenting, as illustrated in Figure 3. One industry association was partially in support of requiring transition plans and the other 15 submissions did not mention them.

Figure 1 Disclosure of Transition Plan – Investor Submissions

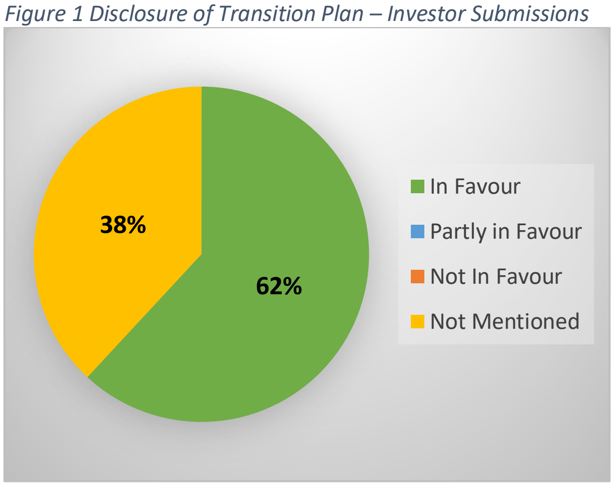


Figure 2 Disclosure of Transition Plan – Issuer/Investor Submissions

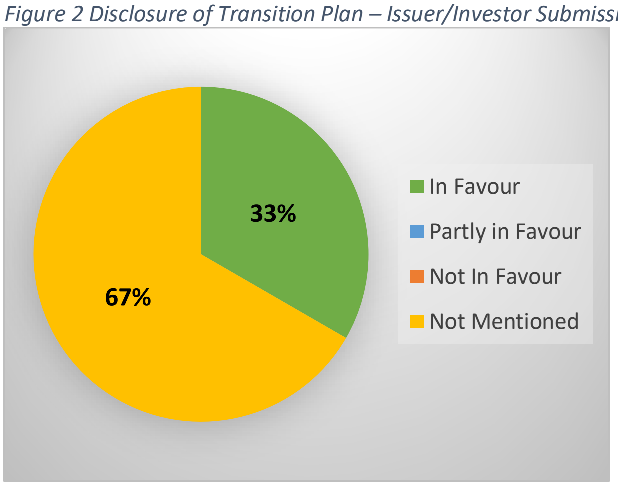
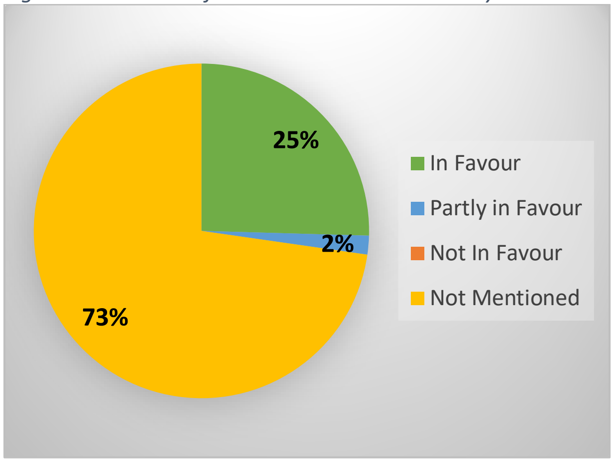


Figure 3 Disclosure of Transition Plan – Third-Party Submissions



The submission of the Canadian Coalition for Good Governance, representing 55 Canadian institutional investors that together manage approximately $5 trillion in assets on behalf of pension funds, mutual fund unit holders, and other investors, offers cogent insights regarding the need for disclosure of transition plans:

> The accelerating shift toward aligning strategy with the transition to a low carbon economy and achieving net zero emissions by 2050 is shaping the assumptions used in scenario analysis. As an increasing number of nations, companies and investors adopt and execute on net-zero transition plans, the likelihood and impact of transition risk will grow. This underlines the importance for companies of undertaking analysis, in particular analysis that includes accelerated timelines for transition.
>
> It further reinforces the need for companies to develop net-zero transition plans. Requirement to disclose net-zero plans is notably absent from the proposed rule-making. Disclosure of these transition plans, including how a company intends to deliver on its net zero (by 2050) and interim (by 2030, 2035, etc.) commitments and targets therein is decision-useful to investors in evaluating the credibility of a company's plan and in measuring progress towards stated targets over time. Notably, in the ISSB climate-related disclosure prototype, the disclosure of transition plans is included as a required disclosure aligned with the TCFD's recommendation to describe the impact of significant climate-related risks and opportunities on the organization's business, strategy and financial planning. We would recommend that the CSA Companion Policy be updated to incorporate an expectation of similar disclosure of transition plans under the pillar of "strategy" reporting. A lack of disclosure in this regard could potentially put Canadian capital markets out of step with global investor expectations reducing competitiveness and raising the cost of capital.[12]

[12] Canadian Coalition for Good Governance submission at 5-6 (footnotes omitted).

The Ivey Foundation, an asset owner and private charitable foundation, emphasized the need for NI 51-107 to require disclosure of net-zero transition plans:

> We are focusing our comments on the notable absence from the proposed NI 51-107 on a requirement to disclose net-zero transition plans.
>
> Disclosure of an issuer's net-zero transition plans are of primary interest due to the systemic risk climate change poses to both issuers and investors. It is through detailed transition plans, including how a company intends to deliver on its net-zero (by 2050) and interim (by 2030, 2035, etc.) commitments and targets that an investor can understand and evaluate the credibility of the plan and measure progress over time. This is decision-critical information that needs to be provided in a credible, consistent, and comparable manner. It is also the direction that is being set globally, with over 3,000 companies committing to net-zero targets and plans alongside 120 countries as part of COP 26 in November 2021. Ensuring that 51-107 includes disclosure of how these net-zero commitments will be implemented through detailed transition plans is critical for the credibility of Canadian issuers and for the competitiveness of the economy.
>
> There are several resources produced by the TCFD and the International Sustainability Standards Board (ISSB) that can be referenced to support the development of net-zero transition plans. 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 which is referenced in this consultation. The TCFD recommends that issuers adopt science-based transition plans, and provides guidance offering accessible, clear factors to consider in disclosing interim targets and how progress is being measured against these targets. The TCFD recommends that issuers in countries that have made a net-zero commitments such as Canada, describe their plans for transitioning in alignment with these commitments. It recommends that organizations should report their initial transition plans, significant updates to the plans, and progress against their transition plans annually, comparing actions year over year. The UK government has moved forward with this approach which is described in the UK Treasury Greening Finance: A Roadmap to Sustainable Investing, and the UK Financial Conduct Authority (FCA) has also incorporated the TCFD's new guidance on transition plans in its requirements.
>
> The International Sustainability Standards Board (ISSB) Climate-related Disclosure Prototype, includes the disclosure of a transition plan aligned with the TCFD recommendations. The details of this requirement include disclosure of the impact of significant climate-related risks and opportunities on the organization's business, strategy and financial planning. We recommend that the proposed NI 51-107 instrument require net-zero transition plans aligned with the TCFD recommendations and those of the ISSB going forward, as this is fundamental for meeting the goals of improving access to global capital, assisting investors in making more informed investment decisions, and removing the costs and reducing market fragmentation associated with navigating multiple disclosure frameworks.[13]

The strong and consistent message from the submissions is that NI 51-107 should be amended to require issuers to disclose transition plans to keep pace with regulatory developments globally.

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[13] Ivey Foundation submission at 2.

4. Issuers should be required to disclose climate-related governance and risk management regardless of materiality

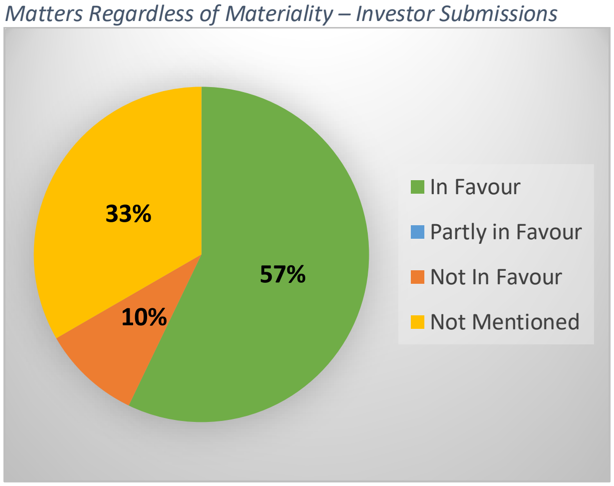
The CSA proposes, consistent with the TCFD recommendations and with disclosure requirements respecting corporate governance matters under NI 58-101 Disclosure of Corporate Governance Practices, that the disclosure required by proposed NI 51-107 regarding climate-related 'governance' and 'risk management' are not subject to a materiality assessment and issuers must provide this disclosure in the applicable continuous disclosure document as required by the proposed instrument.[14]

The materiality issue garnered a number of submissions for and against the proposed disclosure requirements. 51 submissions commented on the CSA's proposal to require disclosure of governance and risk management of climate-related matters regardless of materiality, with 29 (57%) submissions in favour and 22 (43%) not in favour.

Of the 14 investors that commented on the CSA's proposed threshold for disclosure of governance and risk management not subject to a materiality assessment, 12 (86%) supported this approach and 2 (14%) did not. Seven (33%) of the total investor submissions did not comment on this issue (Figure 4). Three of the investor submissions suggested mandatory disclosure of all four pillars of the TCFD framework regardless of materiality, even if only to disclose that an assessment was made by the issuer and found not to be material.

Of the six issuer/investors, two commented on materiality, both in favour of the CSA's approach to disclosure of governance and risk management of climate-related matters regardless of materiality (Figure 5). Thus, overall, 88% of the investor submissions supported the CSA's proposed mandatory disclosure of governance and risk management regardless of a materiality threshold. Of the rest of the issuer submissions, eight issuers were not in favour of the CSA's approach to disclosure of governance and risk management of climate-related matters regardless of materiality (Figure 6).

Figure 4 Disclose Governance and Risk Management of Climate-related Matters Regardless of Materiality – Investor Submissions



[14] CSA Consultation, note 2 at 10.

Figure 5 Disclose Governance and Risk Management of Climate-related Matters Regardless of Materiality – Issuer/Investor Submissions

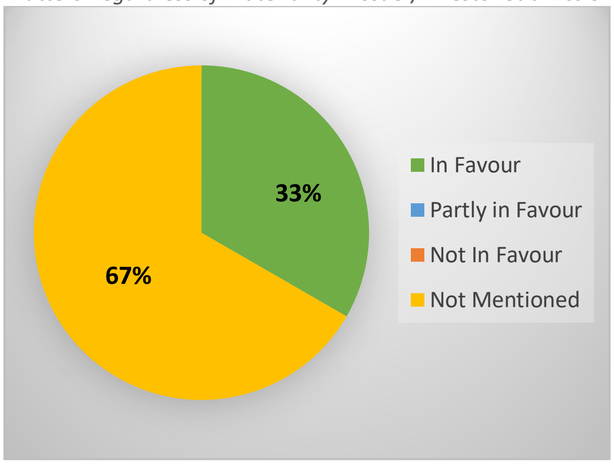
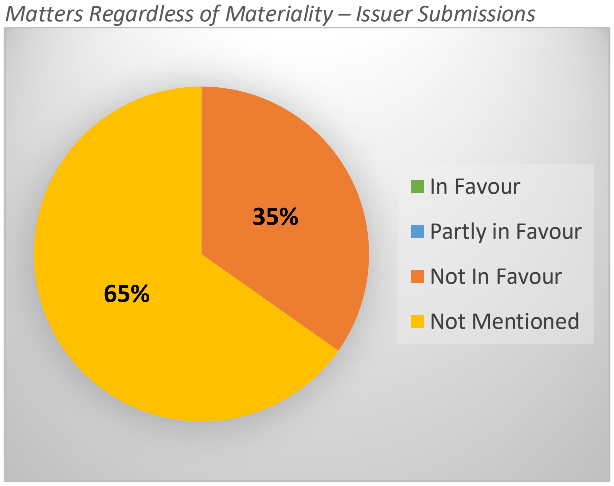


Figure 6 Disclose Governance and Risk Management of Climate-related Matters Regardless of Materiality – Issuer Submissions



Sun Life Financial submitted:

> We recommend that the CSA mandate Scope 1 and Scope 2 emissions, regardless of materiality. It is our understanding that the disclosure of Scope 1 and 2 emissions will not be a significant challenge for issuers, and as an investor, data from these disclosures is vital for estimating our Scope 3 emissions.[15]
>
> …
>
> As we understand the intention of the Proposed Instrument and Proposed Policy, the identification of climate-related risks (i.e., the disclosures required under "Strategy") will be subject to a materiality assessment, but the disclosures relating to how an issuer manages those risks (i.e. the disclosures required under "Risk management") is not subject to a materiality assessment. We believe the Proposed Instrument and Proposed Policy, read together, sufficiently explain the interaction of the risk factor disclosure in the Proposed Instrument with the pre-existing disclosure requirement; however, issuers

[15] Sun Life Financial submission at 7.

> may benefit from further clarity in section 4 of the Proposed Policy that the description of climate related risks and opportunities under "Risk Management" will not be subject to the same materiality assessment as in the pre-existing disclosure requirements of the annual information form and the management's discussion and analysis.[16]

BNP Paribas Asset Management discussed the critical importance of materiality and a holistic approach to disclosure:

> As an active participant in the Canadian financial system, and as a company that recognizes the important role financial regulation can play in supporting the transition to a green economy, BNP Paribas Asset Management provides the following recommendations as the CSA considers how best to structure its own climate disclosure framework. Although many of these recommendations would apply to a wide range of ESG areas, and we support broader mandatory sustainability disclosure, we have focused this letter on climate.
>
> Mandatory and globally consistent Canadian climate disclosures would provide investors with important material and other critical information about how companies contribute and respond to climate change, helping address investors' needs today, creating more efficient markets, and facilitating capital formation for funds and businesses – including those with ESG objectives. The CSA should make climate disclosure mandatory for all reporting companies, in line with the evolution expected at the global level under the umbrella of the G7/G20 and COP 26. While many companies already voluntarily disclose ESG information, such as climate-related risks and opportunities according to the TCFD framework, the information disclosed is not always complete, comparable, or reliable. The absence of standardized disclosures makes it difficult to understand ESG objectives set by issuers and carries the risk of "greenwashing."
>
> The financial services industry is a global industry and has an integral role to play in achieving broad sustainable development goals. Mandatory climate disclosures consistent with internationally harmonized standards will provide transparency to investors who are increasingly keen to understand and monitor the sustainability impact of their investments. In addition, such disclosures will help corporates to accelerate their climate transition efforts and support the development of an efficient market for sustainable and other ESG products, thereby providing funding to both green and transitional activities. In crafting its disclosure regime, the CSA should also coordinate its efforts domestically and internationally with other regulators and authorities, including the European authorities, to avoid inconsistencies between private and public companies' disclosures on climate, and to avoid duplication.
>
> Clarifying a broad and holistic understanding of materiality
> The CSA should continue to define materiality beyond what is deemed to be "financially" material from an accounting standpoint, given that materiality should always be grounded in what is important to investors. This may include factors that are important and useful to investor decision-making, including proxy voting and corporate

[16] Sun Life Financial submission at 12.

engagement, compliance with international norms (e.g., UN Guiding Principles on Business and Human Rights, OECD Guidelines for Multinational Enterprises), national regulations, and client mandates – which may include decisions not to finance activities that may be profitable in the short-term, but in the long-term may produce severe harm to the company itself, society, or the environment. A narrow focus on "financial materiality" prevents investors from receiving the information they need to manage external harms (i.e., "negative externalities" or harm created by companies to third parties), including those that contribute to systemic risks (i.e. threats to financial stability, to the stability of communities, governments, and to key life-support systems such as the climate and biosphere).

For example, it is material whether a company has adopted a commitment to reach "net zero by 2050," despite the long horizon. Investors need to monitor and evaluate performance against that commitment in the short, medium, and long-term. Climate change, biodiversity loss, and other environmental harms accumulate over time, translating into systemic instability over a timeframe that is disconnected from market cycles, and therefore deserves ongoing monitoring. Furthermore, risks that are not considered material to an issuer from a financial perspective in the short run may actually have financial consequences in the long run since the negative environmental and social impact of an issuer's activities may accelerate environmental degradation and trigger the loss of its license to operate due to significant pushback from various stakeholders, including the communities in which it operates, as well as broader economic consequences.

Moreover, disclosures that address concerns raised by other stakeholders are often relevant to investors since those concerns may ultimately represent a risk to issuers that fail to address them. Voting results on shareholder proposals can be instructive here, as they include very strong and consistent support for policies, procedures, and reporting on a wide range of sustainability issues, such as details of how the company will achieve net-zero emissions across its operations, reduce its scope 3 emissions, or set emissions reductions targets, as well as details of how lobbying activity aligns with the goals of the Paris Agreement.

Finally, European investors rely on Canadian securities filings to help comply with European Union (EU) and other home country regulations (as well as obligations under the UN Guiding Principles on Business and Human Rights), to evaluate and address adverse impacts to society and the environment – which makes an approach that's broader than "financial materiality to the issuer" all the more important.[17]

Five industry associations commented on the CSA's approach to disclosure of governance and risk management of climate-related matters regardless of materiality, with 1 (6%) in favour and 4 (25%) not in favour, and 69% not commenting on this issue (Figure 7).

Of the 22 third-party submissions, 14 (25%) were in favour of the CSA's approach to disclosure of governance and risk management of climate-related matters regardless of materiality, 8 (15%) were not in favour, and 60% of the total third-party submissions did not address this issue (Figure 8). Three third-party submissions recommended that all four TCFD pillars of governance, strategy,

[17] BNP Paribas Asset Management submission at 3-4.

risk management, and metrics & targets should be disclosed, irrespective of materiality, and the disclosure itself would then provide information of what is material to investors.

Figure 7 Disclose Governance and Risk Management of Climate-related Matters Regardless of Materiality – Industry Association Submissions

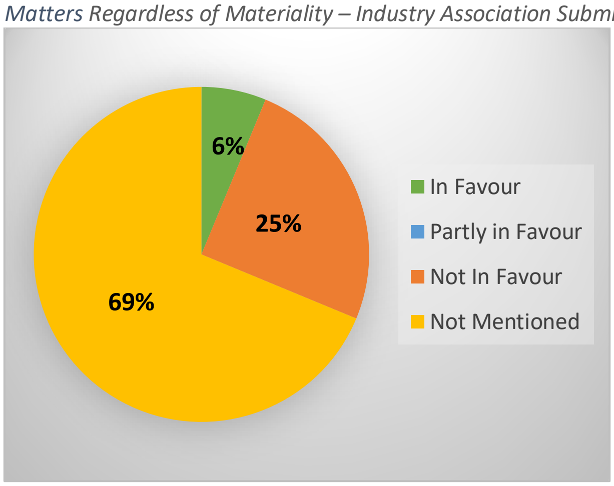
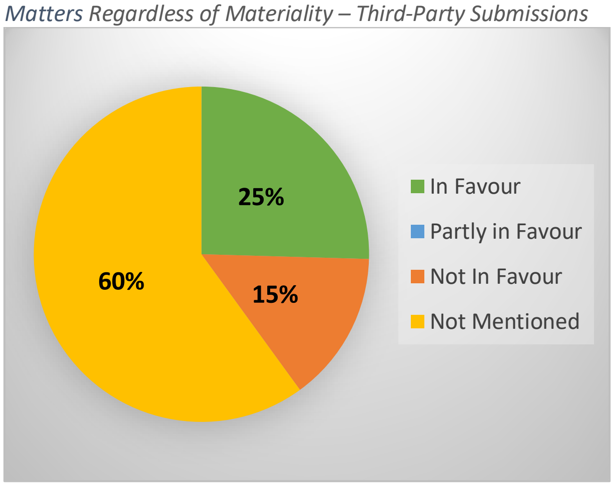


Figure 8 Disclose Governance and Risk Management of Climate-related Matters Regardless of Materiality – Third-Party Submissions



The Global Risk Institute explained in its submission why investors need to know that issuers have considered materiality:

> Materiality assessment is a foundational element of all risk management, including climate risk, and a key component of strategy development. Investors seek to understand if a materiality assessment has been conducted, and what the material risks are for all firms, regardless of size. Techniques or tools adopted by issuers to assess the materiality of climate change to their business include using a risk log, scenario analysis, alignment with voluntary sector standards such as SASB, peer comparison, stakeholder engagement, and others. For those issuers who define certain climate-related risks as immaterial, a detailed explanation should be provided backed by concrete data and

evidence to avoid omitting any climate-related information that is material for investors.[18]

5. Disclosure of greenhouse gas emissions

A significant number of the submissions recommended that the CSA strengthen its requirements for disclosure of GHG emissions from the current proposed requirements.

The CSA has proposed that issuers disclose their Scope 1, 2 and/or 3 GHG emissions or explain why they have not done so. Proposed Form 51-107B of proposed NI 51-107 requires disclosure of:

> 4(a) Disclose:
> (i) the issuer's Scope 1 GHG emissions and the related risks, or the issuer's reasons for not disclosing this information,
> (ii) the issuer's Scope 2 GHG emissions and the related risks, or the issuer's reasons for not disclosing this information, and
> (iii) the issuer's Scope 3 GHG emissions and the related risks, or the issuer's reasons for not disclosing this information.
> (b) disclose the reporting standard used by the issuer to calculate and disclose the GHG emissions referred to in (a).
> (c) If the reporting standard referred to in (b) is not the GHG Protocol, disclose how the reporting standard used by the issuer is comparable with the GHG Protocol.[19]

The CSA proposed, as an alternative: "As an alternative, the CSA is also consulting on requiring issuers to disclose Scope 1 GHG emissions. Under this alternative, disclosure of Scope 2 and Scope 3 GHG emissions would not be mandatory. Issuers would have to disclose either their Scope 2 and 3 GHG emissions and the related risks, or the issuer's reasons for not disclosing this information."[20]

There were some differences of opinion on whether Scope 1, 2 and/or 3 GHG emissions should be required to be disclosed. For ease of understanding the submissions, we have broken the figures down by each of Scope 1, 2, and 3 GHG emissions.

Overall, the majority of submissions support mandatory disclosure of Scope 1 and Scope 2 emissions, and support for disclosure of Scope 3 emissions where material.

i. Disclosure of Scope 1 GHG emissions

Of the 104 submissions that addressed disclosure of Scope 1 emissions, 82 (79%) support mandatory disclosure of Scope 1 emissions for all issuers, rather than the comply-or-explain approach.

The investor submissions were overwhelmingly in support with 100% of investors submissions that addressed this issue in favour of disclosure. Of these investors, 20 (95%) support mandatory disclosure of Scope 1 emissions and 1 (5%) of the investors support disclosure where material (Figure 9). None of the investor submissions took the position of no disclosure.

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[18] Global Risk Institute submission, at 3.
[19] Proposed Form 51-107B, item 4 of proposed NI 51-107, CSA Consultation, note 2 at 29.
[20] CSA Consultation, note 2 at 2.

Of the six issuer/investors, 4 (67%) support mandatory Scope 1 disclosure, 1 (16%) support the CSA proposed comply-or-explain, and 1 (16%) support disclosure where material (Figure 10).

Of the 21 issuer submissions, 11 (52%) support mandatory disclosure of Scope 1 emissions, 8 (38%) support a comply-or-explain approach, and 2 (10%) support disclosure of Scope 1 emissions where material. None of the issuer submissions objected to Scope 1 emissions disclosure (Figure 11).

Figure 9 Disclosure of Scope 1 Emissions – Investor Submissions

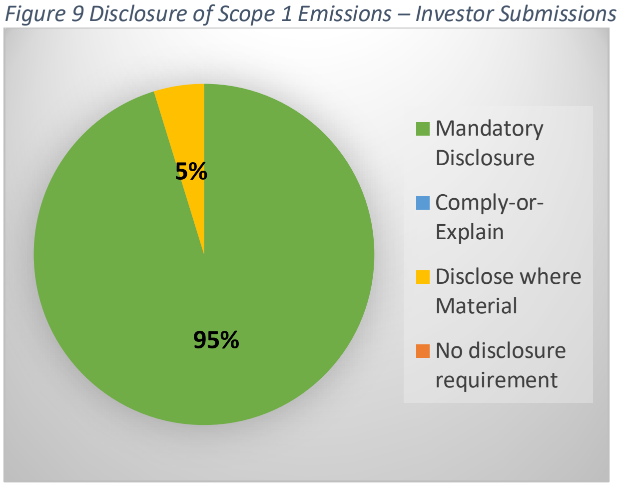


Figure 10 Disclosure of Scope 1 Emissions – Issuer/Investor Submissions

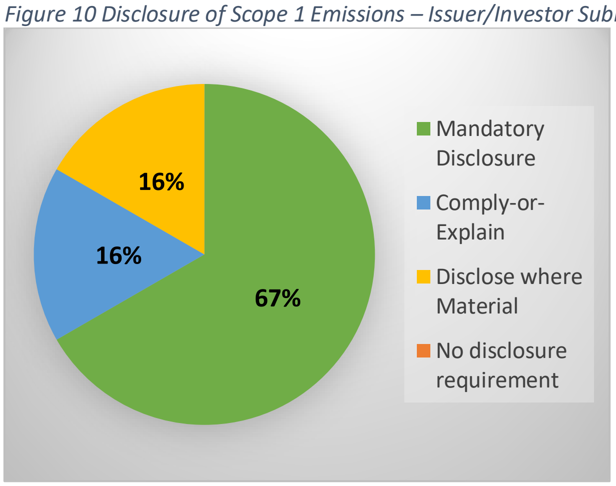
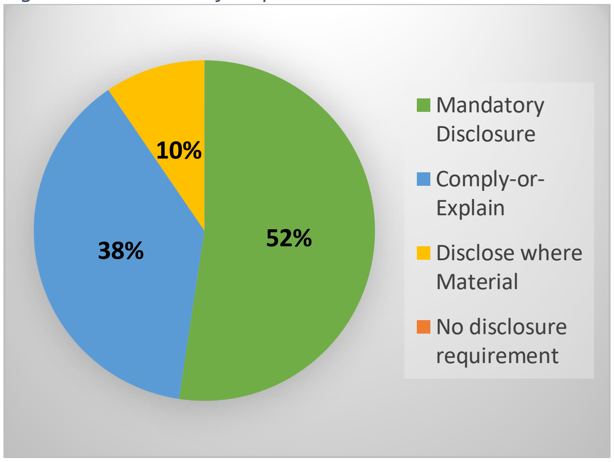


Figure 11 Disclosure of Scope 1 Emissions – Issuer Submissions



12 industry associations made submissions on Scope 1 emissions, 10 (83%) supporting mandatory disclosure, 1 (8%) industry association supports disclosure where material, and 1 (8%) industry association does not support disclosure (Figure 12).

All 44 of the third-party submissions addressing Scope 1 emissions are overwhelming in support of disclosures, with 37 (84%) recommending mandatory disclosure, 4 (9%) endorsing the comply or explain approach, and 3 (7%) submitting that disclosure of Scope 1 emissions be required where material, as illustrated in Figure 13.

Figure 12 Disclosure of Scope 1 Emissions – Industry Association Submissions

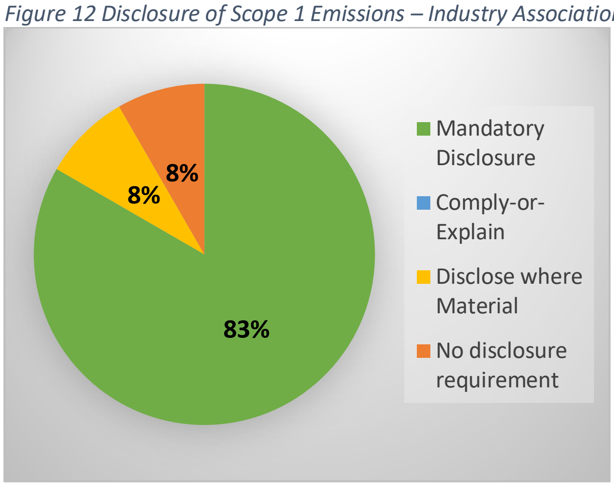
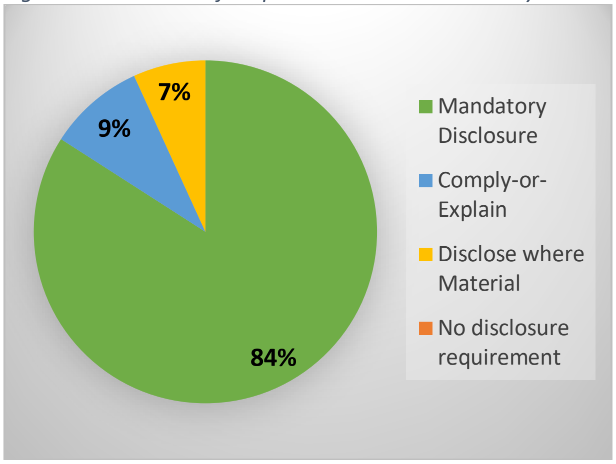


Figure 13 Disclosure of Scope 1 Emissions – Third-Party Submissions



ii. Disclosure of Scope 2 GHG emissions

Of the 104 submissions that addressed disclosure of Scope 2 emissions, 71 (68%) submissions support mandatory disclosure of Scope 2 emissions for all issuers, rather than a comply-or-explain approach.

The investor submissions were overwhelmingly in support with 19 (90%) of investor submissions supporting mandatory disclosure of Scope 2 emissions, and 2 (10%) not supporting Scope 2 emissions disclosure, as illustrated in Figure 14.

Of the six issuer/investors, 4 (67%) support mandatory Scope 2 disclosure, 1 (16%) supports the CSA proposed comply-or-explain approach, and 1 (16%) supports disclosure where material (Figure 15).

Of the 20 issuers that made submissions on Scope 2 emissions disclosure, 9 (41%) support mandatory Scope 2 disclosure; 7 (32%) support the CSA proposed comply-or-explain, 2 (9%) support disclosure where material, and 4 (18%) of the submissions by issuers do not support Scope 2 emissions disclosure (Figure 16).

Figure 14 Disclosure of Scope 2 Emissions – Investor Submissions

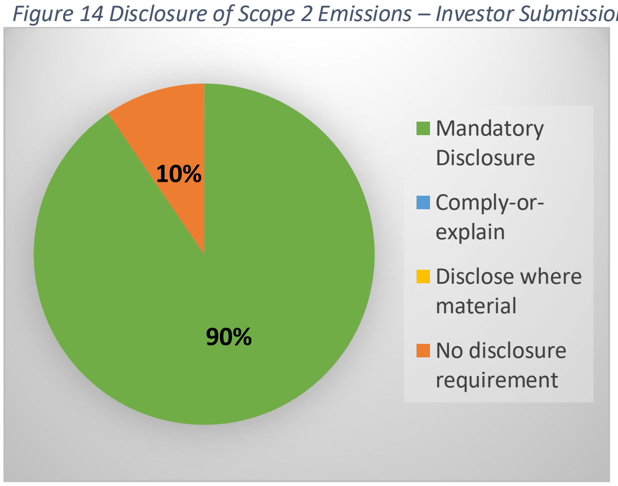


Figure 15 Disclosure of Scope 2 Emissions – Issuer/Investor Submissions

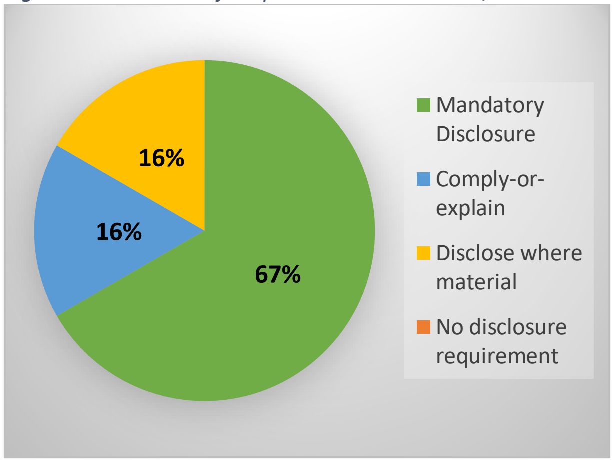
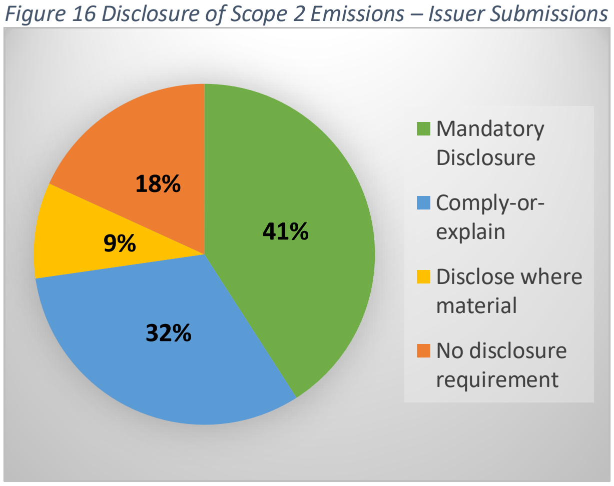


Figure 16 Disclosure of Scope 2 Emissions – Issuer Submissions



The Alberta Investment Management Corporation (AIMCo), with $153 billion assets under management, explains the importance to investors of more than only Scope 1 emissions disclosure:

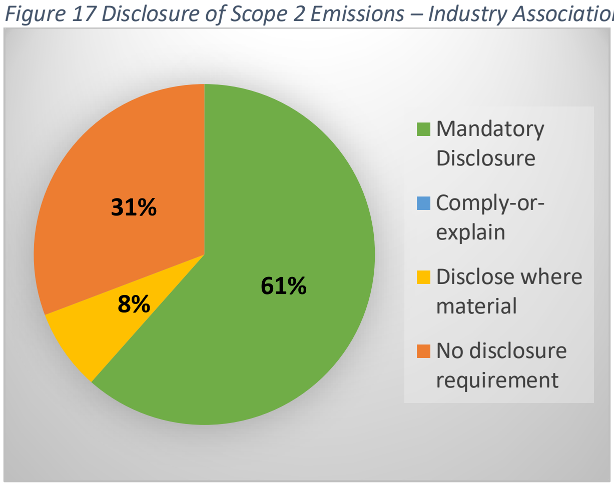
> The proposed instrument contemplates whether reporting of Scopes 1, 2 and 3 greenhouse gas (GHG) emissions is material, whether it should be mandatory to disclose Scopes 1-3 and whether related standards and guidance should follow. AIMCo views climate change as a systemic risk, and as such considers full lifecycle GHG emissions to be material for all industries. Our view is that standard, verifiable disclosure of Scope 1 (produced) and 2 (purchased) GHG emissions should be required for all issuers. While Scope 3 (downstream) GHG emissions accounting continues to have challenges, it can represent the majority of an issuer's lifecycle emissions throughout the value chain. Recognizing this, AIMCo agrees that a comply-or-explain approach to Scope 3 emissions is appropriate at this time. Regardless of whether the firm chooses to disclose its Scope 3 GHG emissions or explains why it has not done so, we recommend it disclose its overarching strategy to meaningfully reduce its Scope 3 GHG emissions. AIMCo recognizes that carbon accounting is a field that continues to evolve, and that the market requires time to build expertise around Scope 3 measurement and reporting.

> AIMCo believes that to ensure consistency between Canadian issuers and with the international community, reporting in alignment with the Greenhouse Gas Protocol should be required. This is also the approach recommended by the International Sustainability Standards Board (ISSB)'s Climate-related Disclosures Prototype. AIMCo recommends that the Greenhouse Gas Protocol reporting standard be followed for measurement and reporting of Scopes 1, 2 and 3 GHG emissions.
>
> While the Proposed Instrument would not require GHG emissions to be audited, AIMCo encourages publicly traded companies to have their emissions independently verified and audited where possible, while acknowledging that this may need to be done in a phased manner, commencing with internal verifications. AIMCo is of the view that issuers' reporting of material ESG information, including climate related data, should be subject to the same rigour as financially-material data, with respect to underlying methodological assessments, verification and assurance protocols and related disclosure requirements.[21]

Of the 13 industry associations that commented on Scope 2 emissions disclosure, of which 8 (61%) support mandatory Scope 2 emissions disclosure, 1 (8%) support disclosure where material, and 4 (31%) do not support disclosure of Scope 2 emissions (Figure 17).

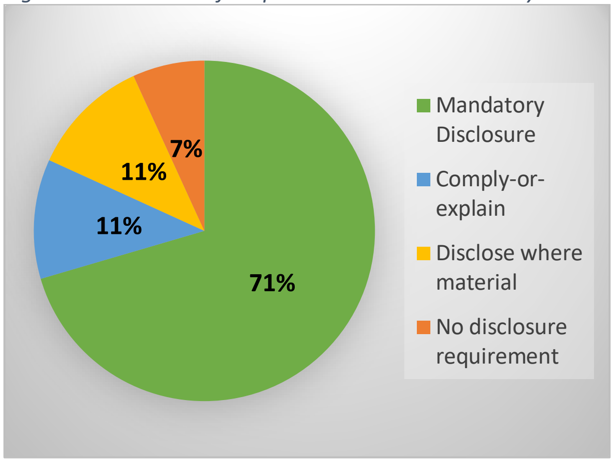
The third-party submissions addressing Scope 2 emissions were strongly in support of disclosure. Of the 44 submissions that commented, 31 (71%) support mandatory disclosure, 5 (11%) support the comply or explain approach, 5 (11%) support requiring disclosure of Scope 2 emissions where material, and 3 (7%) are not in support of Scope 2 emissions disclosures (Figure 18).

Figure 17 Disclosure of Scope 2 Emissions – Industry Association Submissions



[21] Alberta Investment Management Corporation submission, at 2-3.

Figure 18 Disclosure of Scope 2 Emissions – Third-Party Submissions



AlphaFixe Capital, an investment manager specializing in fixed income serving solely institutional clients, recommended making Scope 1 and 2 emissions disclosure mandatory for all issuers; and noted that if the CSA is to retain its comply-or-explain approach, it should require independent third-party verification for all issuers that report that disclosure is not possible and should ensure that all climate-related disclosures are embedded in financial reporting documents.[22] That view was echoed in a number of submissions.

iii. Disclosure of Scope 3 GHG emissions

The majority of submissions recognized the importance of disclosure of Scope 3 emissions as part of climate disclosures, although the submissions were very divided on what the scope or threshold of that disclosure should be. Overall, 43 submissions support Scope 3 emissions disclosure where Scope 3 emissions are material.

Of the 104 submissions that addressed Scope 3 emissions disclosure, 28 (27%) submissions are in favour of mandatory disclosure of Scope 3 emissions, 24 (23%) are in favour of the CSA's comply-or-explain approach, 15 (14%) support disclosure of Scope 3 emissions where material, and 37 (35%) of the submissions are not in favour of requiring disclosure of Scope 3 emissions at this time.

By type of submission, of 21 investor submissions addressing the issue of Scope 3 emissions, 5 (24%) support mandatory disclosure of Scope 3 emissions, 3 (14%) support the CSA's comply-or-explain approach, 9 (43%) support disclosure where material, and 4 (19%) do not support Scope 3 emissions disclosure, as illustrated in Figure 19. Thus, the strongest support was for Scope 3 emissions disclosure where they are material to the issuer's business.

Of the six issuer/investors, 2 (33%) support mandatory Scope 3 emissions disclosure, 2 (33%) support the CSA proposed comply-or-explain approach, 1 (17%) supports disclosure where materials and 1 (17%) does not support disclosure (Figure 20).

[22] AlphaFixe Capital submission at 2.

Of the 20 issuers that made submissions on Scope 3 emissions disclosure, 1 (5%) supports mandatory Scope 3 disclosure; 7 (35%) support the CSA proposed comply-or-explain approach; 1 (5%) supports disclosure where material; and 11 (55%) do not support Scope 3 emissions disclosure (Figure 21).

Figure 19 Disclosure of Scope 3 Emissions – Investor Submissions

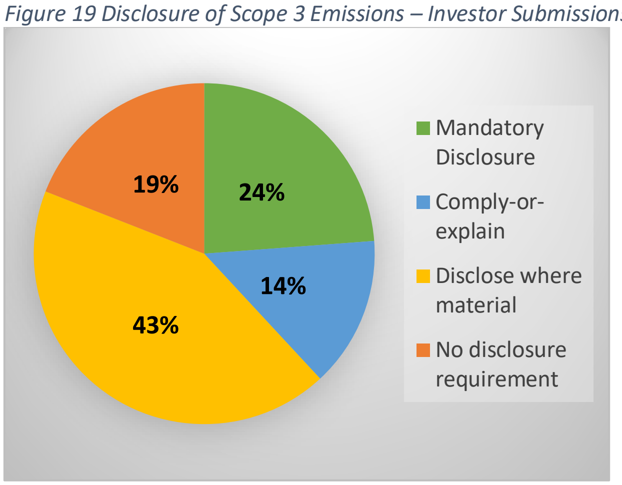


Figure 20 Disclosure of Scope 3 Emissions – Issuer/Investor Submissions

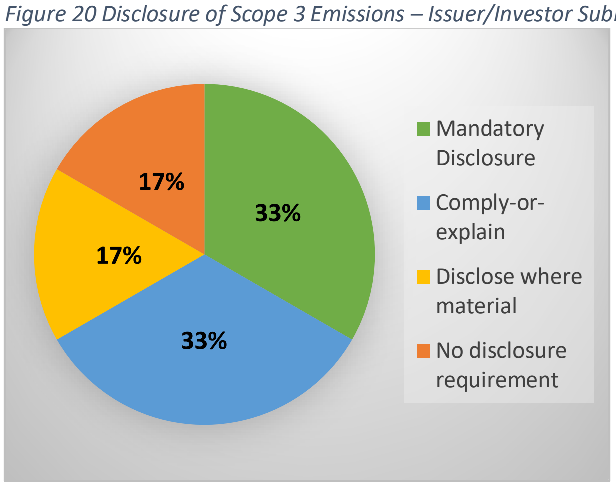
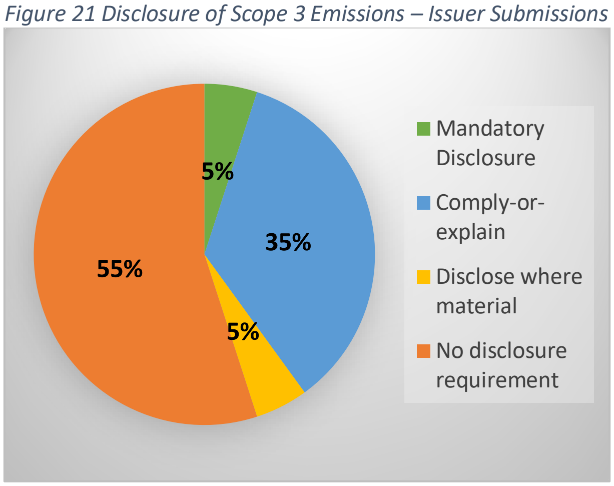


Figure 21 Disclosure of Scope 3 Emissions – Issuer Submissions



OMERS, one of Canada's largest defined benefit pension plans, with $114 billion in net assets, has recently committed to a net-zero 2050 emissions goal for its portfolios. In respect of emissions disclosure, it submitted:

> We strongly believe that companies should be encouraged to adopt disclosures consistent with the TCFD, and as such there should not be an option for issuers to assume an across the board 'comply or explain' approach to GHG emissions disclosures. GHG emissions information is important to OMERS, as it provides a baseline for how we measure and manage climate-related risks and opportunities.[23]
>
> …
>
> We believe that issuers should be required to disclose Scope 1 and Scope 2 GHG emissions. Issuers should also be required to disclose Scope 3 GHG emissions if they deem them to be material. The TCFD recently updated its 2021 recommendations, indicating that all organizations should disclose absolute Scope 1 and Scope 2 GHG emissions independent of a materiality assessment.[24]
>
> …
>
> Independent assurance on the accuracy, completeness, and classification of GHG emissions data supports our investment decision-making processes that include consideration of the impacts of climate change. We also use this information to compute our own Fund carbon footprint and related metrics. Accordingly, we believe there should be some form of assurance on GHG emissions reporting, beginning with limited assurance and working towards audit level as the standards evolve. In support of this, issuers should also disclose whether their internal audit function was engaged and what criteria was used to assess the accuracy and completeness of its climate-related disclosures.
>
> …
>
> Investors need comparability across issuers, which requires all issuers to disclose consistent information in a consistent place. Further to our CEO's 2020 joint statement with Canada's leading pension plan investment managers, to deliver on our mandate, we require increased transparency from companies. How companies identify and address issues such as climate change can significantly contribute to value creation and erosion. Companies have an obligation to disclose their material business risks and opportunities to financial markets and should provide financially relevant, comparable, and decision-useful information. We ask that companies measure and disclose their performance on material, industry-relevant ESG factors by leveraging the Sustainability Accounting Standards Board (SASB) standards and the TCFD framework to further standardize ESG-related reporting.[25]

Morningstar Research, Inc, a provider of data and analytics in Canada and an issuer of US-listed stock, stated in its submission that "in the realm of climate related disclosures, the time for "comply or explain" has passed and that "it is time to move to the next stage and mandate a baseline set of disclosures".[26] It submitted:

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[23] OMERS submission at 2.
[24] OMERS submission at 3.
[25] OMERS submission at 4.
[26] Morningstar Research Inc submission, at 5.

> Morningstar supports mandating climate-related disclosures when they are financially material to the company, inclusive of Scope 1, 2 and 3 GHG emissions. This added transparency helps investors make more informed decisions around climate change. However, we emphasize that a snapshot of GHG emissions alone does not encapsulate the trend in carbon output for a corporation, which is a crucial consideration for investors as Canada transitions to a carbon-neutral economy. Companies increasingly publish their climate metrics and targets, and they should also disclose their progress against these goals. It is critically important for regulators to compel issuers to do the hard work of establishing clear metrics and targets for managing climate risks and opportunities. Further, to provide useful, financially material disclosures, issuers must be compelled to disclose progress against these metrics. Without such disclosures, investors will find it harder to judge a company's progress or effort in executing its strategies. Further, without such disclosures, it can be difficult to tell if a company is making necessary capital investments to execute the strategy they have outlined.[27]
>
> …
>
> Within the realm of investment funds, there is a strong need for fund disclosures to help investors understand what their sustainable fund does to manage carbon and climate risk. Improving issuer-level disclosures will help asset managers improve these disclosures to individual investors; but our data shows important differences in how funds approach carbon and climate risk, which the CSA should consider as it contemplates new disclosures. For example, while investors likely expect a fund that markets itself as "sustainable" to have low exposure to carbon risk, we find that not all sustainable funds to which we assign a Carbon Risk Score receive our Low Carbon Designation. Though the discrepancy is more prevalent in the US than in Canada, the proliferation of new sustainable funds warrants attention to this detail.
>
> …
>
> We note that there is already an ecosystem of consultants and traditional accounting firms with the capability to audit and ensure these disclosures. If these standards are not audited, or if there is weak enforcement of ensuring they are accurate, they will not be useful. As noted, even in cases where we have climate or carbon disclosure, it is often not of high-quality hence the need for third-party audit.[28]

Of the 13 industry association submissions that commented on Scope 3 emissions disclosure, 1 (8%) supports mandatory Scope 3 emissions disclosure, 1 (8%) supports the CSA proposed comply-or-explain approach, 1 (8%) supports disclosure where material and 10 (77 %) industry associations do not support disclosure of Scope 3 emissions (Figure 22).

44 third-party submissions addressed Scope 3 emissions disclosure, with very mixed views on and scope or threshold for such disclosures: 19 (43%) recommend mandatory disclosure of Scope 3 emissions, 11 (25%) endorse the comply or explain approach, 3 (7%) support disclosure where material, and 11 (25%) are not in support of Scope 3 emissions disclosures (Figure 23).

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[27] Morningstar Research Inc submission, at 2.
[28] Morningstar Research Inc submission, at 2, 3, 9.

Figure 22 Disclosure of Scope 3 Emissions – Industry Association Submissions

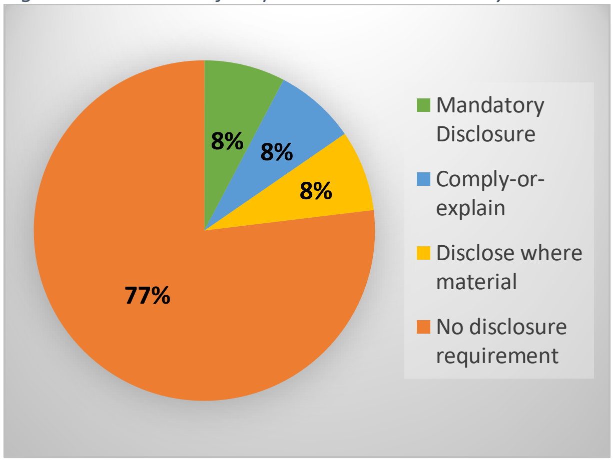
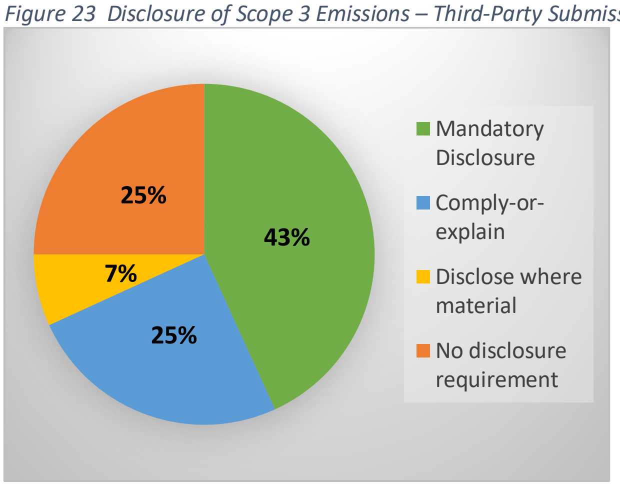


Figure 23 Disclosure of Scope 3 Emissions – Third-Party Submissions



The Institute for Sustainable Finance's submission reflected a number of submissions on the comply-or-explain approach to emissions disclosure:

> We also disagree, even more strongly, with providing issuers the "option" to not disclose their GHG emissions if they provide an explanation for doing so. Many firms currently disclose their GHG emissions in Canada. In other jurisdictions such as the EU and the UK, a much higher percentage of firms do so. Such information is essential for capital allocators, regulators and for the companies themselves as we transition to a net-zero economy by 2050. For companies, not having a starting point measurement for emissions is inexcusable, and severely inhibits the development of legitimate transition plans. Importantly, the lack of availability of such information further complicates data issues for regulators and capital allocators as they plan their own transition strategies towards net-zero. In addition, there is evidence that once firms start reporting GHG emissions, they take actions to reduce them. For example, studies by Downar et al. (2020), and Jouvenor and Krueger (2020), both document significant declines in GHG emissions by newly reporting companies in the 14-18% range, following the

implementation of required GHG emissions disclosures by UK-listed companies in 2013.[29]

6. Disclosure of greenhouse gas emissions using the Greenhouse Gas Protocol

Proposed NI 51-107 contemplates that issuers that provide GHG disclosures would be required to use a GHG emissions reporting standard in measuring their GHG emissions, specifically, the Greenhouse Gas Protocol (GHG Protocol)[30] or a reporting standard comparable with the GHG Protocol.[31] The CSA notes that where an issuer uses a reporting standard that is not the GHG Protocol, it would be required to disclose how the reporting standard used is comparable with the GHG Protocol.[32]

53 submissions support making the GHG Protocol the reporting standard. Many submissions noted that the GHG Protocol has become the global reporting standard for GHG emissions calculations and should be required pursuant to NI 51-107 to create consistency of Canadian issuer reporting with global market expectations, facilitate consistency and comparability, reduce costs, and prevent fragmentation.

Of the 21 investor submissions, 14 (66%) investors are in favour using the GHG Protocol as the reporting standard, indicating support because it is the most widely used methodology. The majority of these submissions note that given the importance of comparability of data, there is no justification for issuers adopting an alternative. One submission (5%) is partly in favour, 1 (5%) is not in favour, and 5 (24%) do not take a position in their submission (Figure 24).

Of the six issuer/investor submissions, 4 (66%) are in favour, 1 (17%) partially supports the GHG Protocol as the standard, and 1 (17%) is not in favour, the latter submitting that it does not support mandating the GHG Protocol as a new standard may be developed in the future (Figure 25).

Of the 23 other issuer submissions, 11 (48%) are in favour of mandating the GHG Protocol as the emissions reporting standard, 1 (4%) partly supports, and 6 issuers (26%) are not in favour, as illustrated in Figure 26. Thus, about half of the issuers indicate support of using the GHG Protocol as a standardized reporting methodology in order to ensure that disclosed information is reliable, consistent, and comparable between issuers. The six issuers not in favour expressed concern over a lack of flexibility and the specificity required on how GHG emissions are calculated.

[29] Institute for Sustainable Finance submission at 3-4.
[30] GHG Protocol, Greenhouse Gas Protocol | (ghgprotocol.org).
[31] CSA Consultation, note 2 at 13.
[32] CSA Consultation, note 2 at 13.

Figure 24 GHG Protocol as the Reporting Standard- Investor Submissions

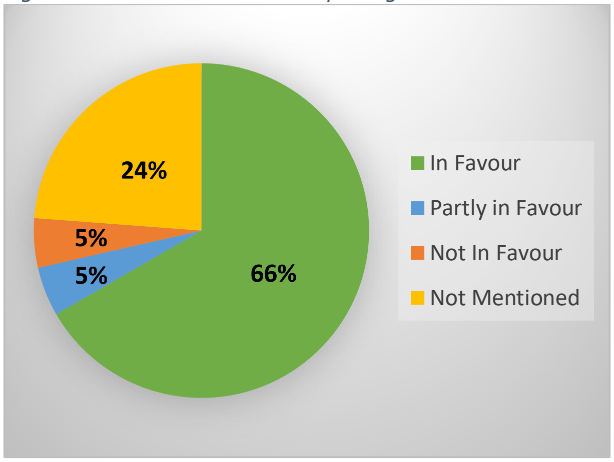


Figure 25 GHG Protocol as the Reporting Standard- Issuer/Investor Submissions

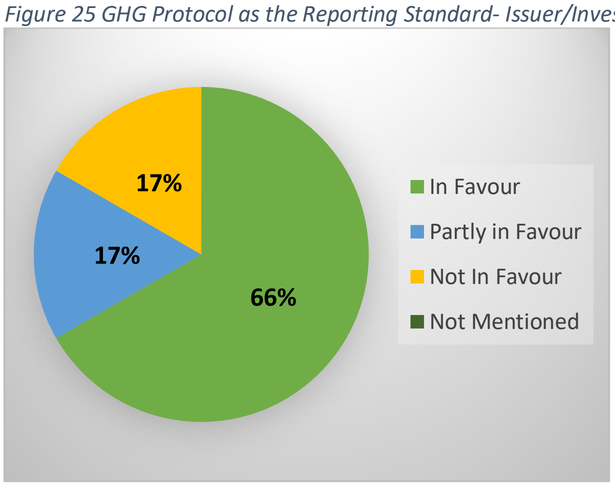
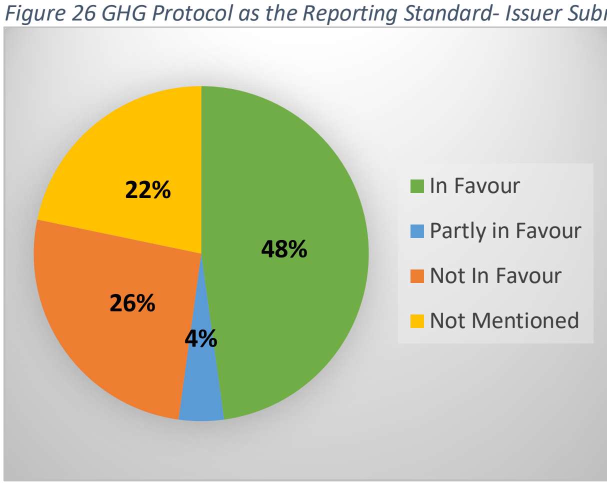


Figure 26 GHG Protocol as the Reporting Standard- Issuer Submissions



In its submission, the University Pension Plan Ontario (UPP), with more than $10 billion assets under management, discussed the importance of the GHG Protocol as the reporting standard:

> Yes, the use of the GHG Protocol should be mandated with no substitutes for all issuers. 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 build on the GHG Protocol Scope 3 accounting rules. 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. Issuers should not have the flexibility to use alternative reporting standards.

Industry associations were divided on the question of the GHG Protocol as the reporting standard. Of the 16 industry associations, 3 (19%) are in favour of mandating the GHG Protocol reporting standard, 3 (19%) are partly in favour, making it the baseline standard but allowing issuers to demonstrate use of other standards of equal rigour, and 2 (12%) are not in favour, with half of the associations not mentioning the standard in their submission (Figure 27). The submissions not in favour note the protocol's appropriateness for large issuers, but express concern regarding its lack of applicability to small companies, suggesting that in some instances, other industry standards should be accepted as long as issuers can demonstrate they are consistent with the GHG Protocol.

Of the 55 third-party submissions, 21 (38%) support mandating the GHG Protocol as the reporting standard, 7 (13%) are partly in favour, and 9 (16%) are not in favour (Figure 28). Generally, the third parties making submissions support a requirement to use, as a minimum standard, the GHG Protocol, noting its broad consensus, support, and adoption globally, and submitting that the GHG protocol as the standard will provide comparability across companies and industries. Some of the submissions not in favour express concern regarding its lack of applicability to small companies.

Figure 27 GHG Protocol as the Reporting Standard- Industry Association Submissions

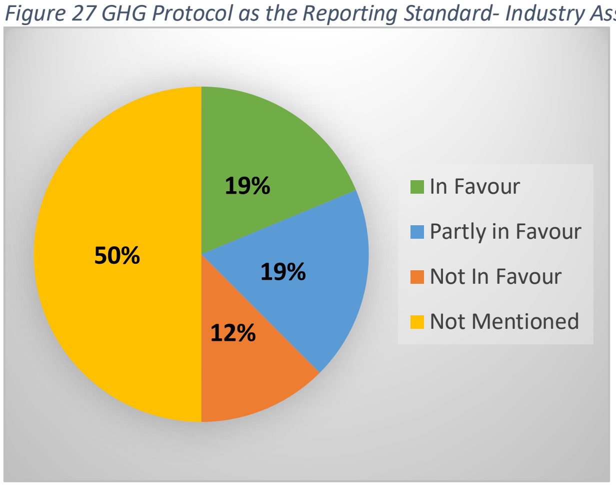
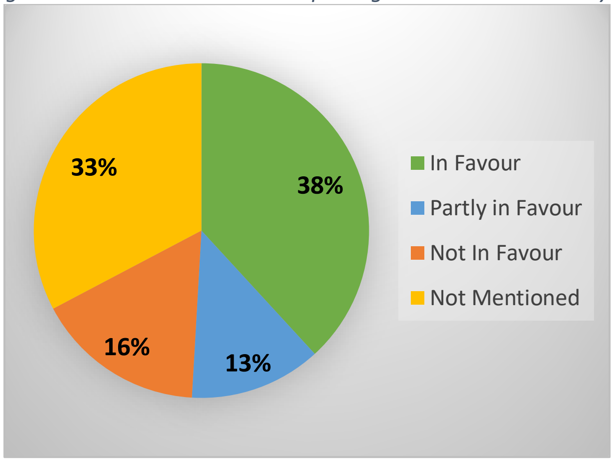


Figure 28 GHG Protocol as the Reporting Standard - Third-Party Submissions



7. Climate-related disclosures should be embedded in annual financial reporting documents

Proposed NI 51-107 includes climate-related disclosures in the financial reporting documents, specifically the annual information form (AIF) or the issuer's annual management discussion and analysis (MD&A).[33] Under the continuous disclosure regime, NI 52-110 Audit Committees already requires an issuer's audit committee to review its financial statements and MD&A; NI 51-102 Continuous Disclosure Obligations requires their approval by the board of directors; and NI 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings requires an issuer's chief executive officer and chief financial officer to certify certain matters in relation to the financial statements, MD&A and/or AIF.

Proposed NI 51-107 states that the climate-related disclosure requirements relating to *governance* would be included in a reporting issuer's management information circular; and for issuers that do not send a management information circular to their securityholders, the disclosure would be provided in the issuer's AIF or in its MD&A if the issuer does not file an AIF.[34] The climate-related disclosures related to *strategy, risk management, and metrics and targets* specified by the proposed instrument are to be included in the reporting issuer's AIF or annual MD&A.[35] Proposed Form 51-107B of proposed NI 51-107 permits an issuer to incorporate GHG disclosure by reference to another document. The CSA states:

> Form 51-107B permits an issuer to incorporate GHG disclosure by reference to another document. If doing so, the issuer must clearly identify the reference document or any excerpt of it that the issuer incorporates into the disclosure provided under Item 4 of Form 51-107B. Unless the issuer has already filed the reference document or excerpt under its SEDAR profile, the issuer must file it at the same time as it files the document containing the disclosure required under Form 51-107B.[36]

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[33] For a discussion of annual financial reporting, see M Condon *et al, Securities Law in Canada* (3rd ed) Emond Montgomery, chapter 6.
[34] Section 3(2), proposed NI 51-107; CSA Consultation, note 2 at 9.
[35] Section 4(1) and (2), proposed NI 51-107; CSA Consultation, note 2 at 9.
[36] Item 4(a) of Form 51-107B, CSA Consultation, note 2 at 29.

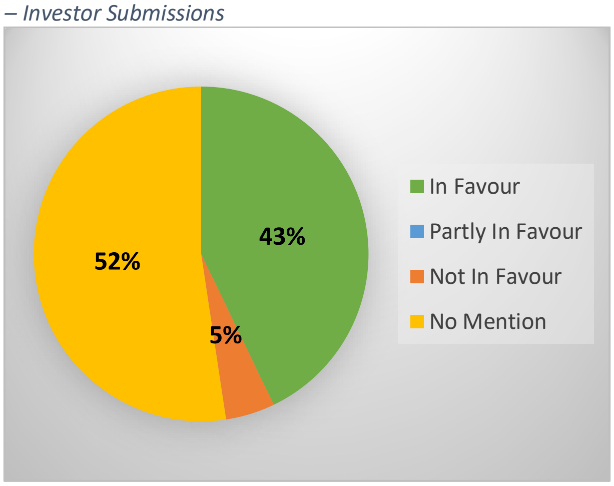
A number of submissions objected to just allowing reference in the financial reporting documents to another document, expressing concern about the accountability and comparability of disclosure outside of documents that include audit assurance and officer certification.

Of the 21 investors that made submissions, one half did not make any comment of the location of the disclosures. 9 (43%) investors are in favour of embedding the disclosure in the annual financial reporting documents, including MD&A or AIF, and 1 (5%) is not in favour (Figure 29). Thus, of the 10 investor submissions that commented, 90% were in favour of embedding climate-related disclosure in the annual financial reporting.

Five of the six issuer/investor submissions discussed this question, 2 (33%) supported disclosure by reference and 3 (50%) did not support, preferring that the CSA modify rather than reject the requirement to embed disclosures in financial filings (Figure 30). One issuer/investor proposed to modify the requirement by allowing for a year lag in data, while another suggested disclosure in financial filings only when such disclosures were material from a securities law perspective.

Of the 23 issuers who made submissions to the CSA, 2 (9%) are in favour of disclosure in financial filings, including MD&A or AIF, 1 (4%) is partly in favour, and 16 (70%) issuers are not in favour (Figure 31). While most issuers indicated that they would prefer having the option of disclosure by reference to a separate document, the qualitative analysis suggests that this preference is underpinned by concerns about timing and liability, the latter of which could be alleviated by a safe harbour provision, as discussed below. The CSA states that regulators are sensitive to concerns related to the regulatory burden and cost of climate-related disclosure and addressed this concern by "the disclosure requirements will be phased-in over a one-year period for non-venture issuers and over a three-year period for venture issuers.[37]

Figure 29 Disclosure in Financial Filings, including MD&A or AIF – Investor Submissions



[37] CSA Consultation, note 2 at 3.

Figure 30 Disclosure in Financial Filings, including MD&A or AIF – Issuer/Investor Submissions

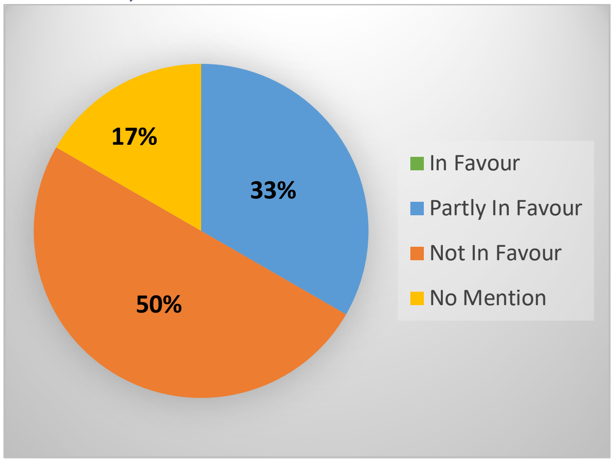
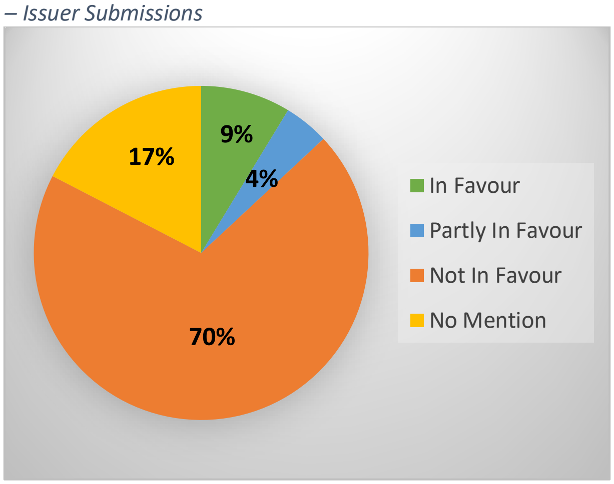


Figure 31 Disclosure in Financial Filings, including MD&A or AIF – Issuer Submissions



An example of concern about timing is the Baytex Energy Corp submission:

> Reporting GHG emissions in conjunction with an issuer's AIF or Annual MD&A presents timing challenges at present. Having all reporting requirements fall on one point of the year would necessitate additional resources, especially if dealing with new forms of filings where systems and outputs require additional attention and review.[38]

In contrast, Nutrien Ltd answered the CSA question as to whether the requirement in the proposed Instrument to include GHG emissions in the issuer's AIF or annual MD&A present a timing challenge by responding that "Nutrien is required to report certain GHG emissions under existing legislation. However, we do not foresee a timing challenge."[39]

[38] Baytex Energy Corp submission at 2.
[39] Nutrien Ltd submission at 6.

Hydro One submitted:

> The requirements in the Proposed Instrument to include GHG emissions in the issuer's annual information form (AIF) or annual management discussion and analysis (MD&A) presents Hydro One and we expect, other issuers a timing challenge. We are currently able to publish our verified GHG emissions data within about six to eight months following our financial year end. This timeline allows us to accurately measure and report data that has gone through internal controls and well-established data validation procedures. We believe the best way to address the challenge of this timing gap is to allow issuers the flexibility in choosing the appropriate public document(s) in which to publish the proposed required climate-related disclosures.
>
> . . .
>
> We support the requirement for an independent, third-party limited level of assurance of GHG emissions. Third party review (audit, assurance, or verification) provides an added layer of confidence that the GHG emission disclosures are reliable, consistent, and comparable. Auditing of GHG data and climate-related disclosures requires a higher level of technical expertise and competence than the skill set possessed by most accountants and financial auditors. To close this gap, we encourage the CSA to consider the recommendations provided by the International Auditing and Assurance Standards Board and the World Business Council for Sustainable Development related to the Extended External Reporting (EER) published in March 2021 or similar accreditations for verifying GHG emissions data in accordance with ISO 14065. The EER details the technical competencies required for accepting an assurance engagement on climate disclosures and other ESG information.[40]

Industry associations diverged in opinion on location of disclosures of climate-related matters. Of the 16 industry associations, 3 (19%) are in favour of disclosure in financial filings, including MD&A or AIF, 2 (12%) are in favour of a modified version, 5 (31%) are not in favour, and 6 (38%) did not comment (Figure 32).

Of the 55 third-party submissions to the CSA, almost half did not express a view of where the disclosure was to be made. 9 (16%) submissions were in favour of disclosure in financial filings, including MD&A or AIF, 6 (11%) were partly in favour, and 13 (24%) were not in favour (Figure 33).

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[40] Hydro One submission at 4, 5-6.

Figure 32 Disclosure in Financial Filings, including MD&A or AIF – Industry Association Submissions

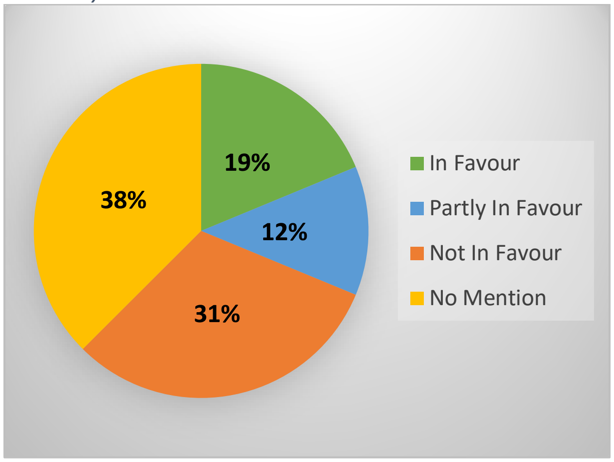
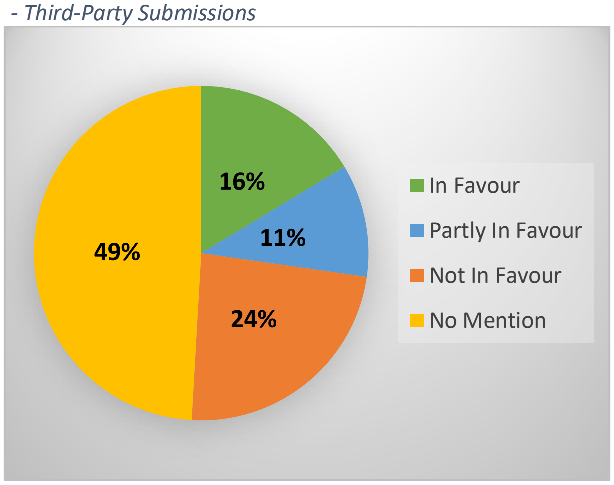


Figure 33 Disclosure in Financial Filings, including MD&A or AIF - Third-Party Submissions



Many submissions noted that although requiring disclosure in annual financial filings will create some challenges for issuers, this inconvenience must be weighed against the benefits to investors that require climate-related disclosures in an accessible, comparative, and centrally accessible form. Submissions notes that this balancing of interests should take into account the effectiveness in achieving the goals of the national instrument, and mitigating systemic climate-related risks to capital markets by improving transparency and accessibility of climate-related information.

The Canadian Auditing and Assurance Standards Board (AASB), which has responsibility for setting standards and guidance for quality control, audit, and other assurance, submitted the following concerns with respect to where disclosure should be included:

> Under the proposed instrument, climate-related disclosures are provided in "the issuer's annual information form (AIF) or its annual management's discussion and analysis (MD&A), if the issuer does not file an AIF." Under CAS 7203,[41] the auditor is required to read and consider the information in the MD&A but not the AIF. This may result in

[41] Canadian Auditing Standards (CAS) 720, The Auditor's Responsibilities Relating to Other Information.

inconsistent practices for which the auditor's responsibilities differ depending on where the climate-related disclosures are located. This could further contribute to the expectation gap (the difference between what users think auditors do and what they actually do). To facilitate consistent auditor involvement, the CSA may wish to require climate-related disclosures to be included in the MD&A. However, we note that this inconsistency may not be an issue if the CSA's proposal[42] to combine the financial statements, MD&A and the AIF into one reporting document, the Annual Disclosure Statement, comes into effect prior to the proposed instrument.[43]

8. Prospectus disclosure requirements should be aligned with the climate-related continuous disclosure requirements

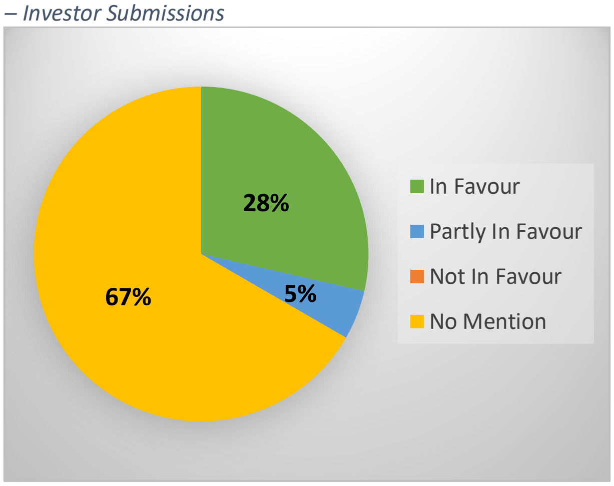
The CSA noted that Form 41-101F1 Information Required in a Prospectus does not contain the climate-related disclosure requirements contemplated by proposed NI 51-107, and it asked whether an issuer should be required to include the disclosure required by the proposed instrument in a long-form prospectus.[44]

Of the 21 investors who made submissions, 6 (28%) are in favour of requiring disclosure of climate-related matters in the prospectus, 1 (5%) is partly in favour, and 14 (67%) did not comment (Figure 34). None of the investors opposed such a requirement.

Of the six issuer/investor submissions, 2 (33%) are in favour requiring disclosure of climate-related matters in the prospectus, 1 (17%) is not in favour, and the other three did not comment on the question in their submission to the CSA (Figure 35).

Of the 23 issuers who made submissions, 2 (9%) were in favour of requiring disclosure of climate-related matters in the prospectus, 1 (4%) was partly in favour, and 3 (13%) were not in favour, but the majority 17 (74%) made no submission on this question (Figure 36).

Figure 34 Disclosure of Climate-related Matters in Prospectus – Investor Submissions



[42] Proposed Amendments to National Instrument 51-102 Continuous Disclosure Obligations, issued in May 2021.
[43] Canadian Auditing and Assurance Standards Board submission at 3-4.
[44] CSA Consultation, note 2 at 15.

Figure 35 Disclosure of Climate-related Matters in Prospectus – Issuer/Investor Submissions

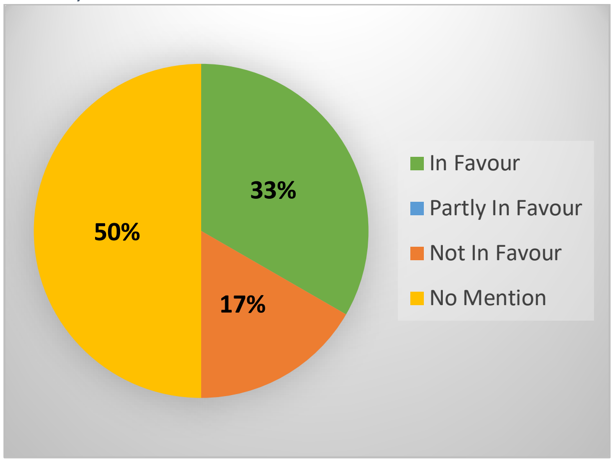
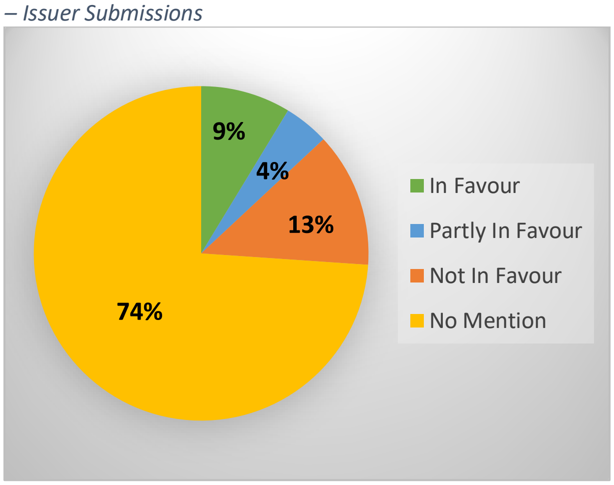
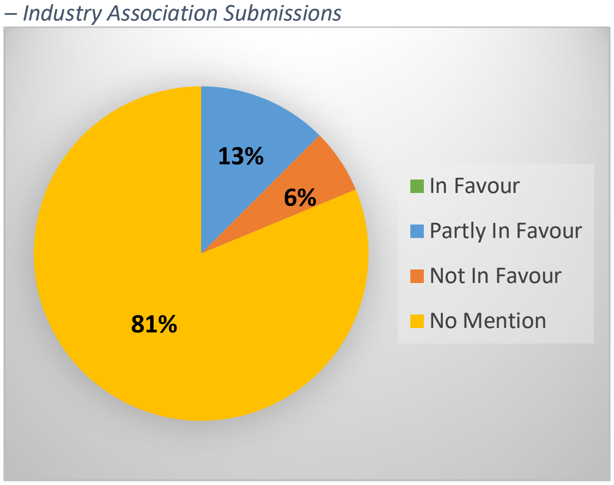


Figure 36 Disclosure of Climate-related Matters in Prospectus – Issuer Submissions



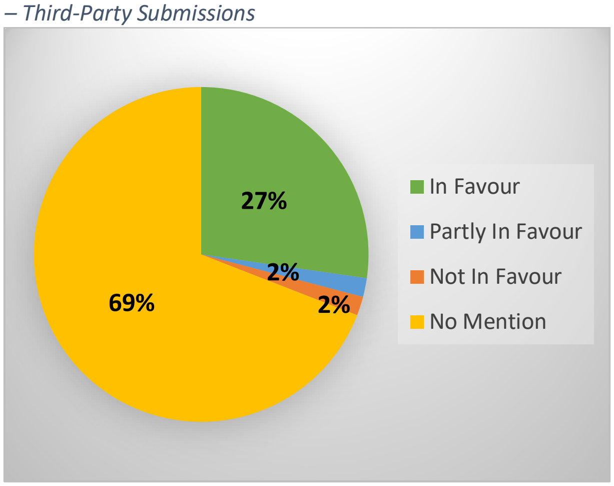
Similarly, the industry association submissions had few suggestions, with 81% not commenting. Two (13%) were in favour of requiring disclosure of climate-related matters in the prospectus and 1 (6%) was not in favour (Figure 37).

Figure 37 Disclosure of Climate-related Matters in Prospectus – Industry Association Submissions



Of the 55 third-party submissions to the CSA, only 17 commented on the issue of prospectus disclosure, and of these submissions 15 were in favour of requiring disclosure of climate-related matters in the prospectus, 1 was partly in favour, and 1 was not in favour (Figure 38). Thus, of the third-party submissions commenting, 94% believe it is important to align climate-related disclosure in prospectuses so that investors can assess the risks and opportunities.

Figure 38 Disclosure of Climate-related Matters in Prospectus – Third-Party Submissions



Mouvement des caisses Desjardins (Desjardin Group) submitted that climate-related information should be included in a regular prospectus as it is useful information for investors.[45] The TMX Group submitted that for consistency, both the Toronto Stock Exchange (TSX) and the Toronto Stock

[45] Mouvement des caisses Desjardins submission at 10.

Exchange Venture (TSXV) are of the view that the disclosures required under the proposed Instrument should be included in all long-form prospectuses once an issuer is subject to the disclosure requirements.[46]

9. Create a safe harbour for disclosure of current metrics and methodologies for measuring emissions

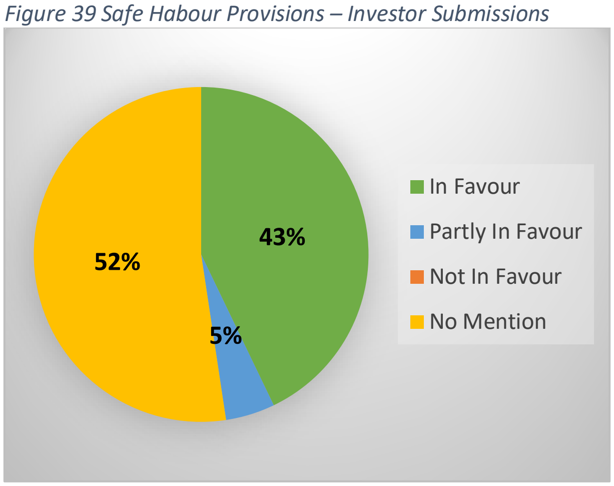
The CSA notes that disclosure provided by issuers pursuant to the proposed instrument may constitute forward-looking information (FLI); and when an issuer discloses FLI pursuant to the new proposed NI 51-107, it must comply with the requirements set out in Part 4A, Part 4B and section 5.8 of NI 51-102 Continuous Disclosure. Guidance on those requirements can be found in Part 4A of Companion Policy 51-102CP Continuous Disclosure Obligations and CSA Staff Notice 51-330 Guidance Regarding the Application of Forward-Looking Information Requirements under NI 51-102 Continuous Disclosure Obligations. The CSA notes that the FLI requirements do not relieve issuers from disclosing material climate-related risks even if they are expected to occur or crystallize over a longer time frame.[47]

The CSA consultation document does not discuss a safe harbour for current disclosures other than FLI; however, a number of submissions made such a recommendation.

Of the investor submissions that addressed safe harbours, all favoured some form of a safe harbour, 9 (43%) in favour, 1 (5%) partially in favour, while most did not comment on this issue (Figure 39).

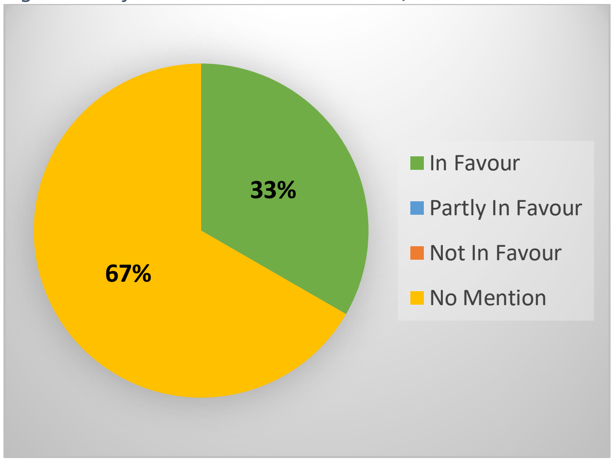
For the six issuer/investor submissions, two recommended a safe harbour and four did not comment (Figure 40). Interestingly, none of the 23 other issuer submissions to the CSA mentioned the issue of safe harbours for disclosure.

Figure 39 Safe Habour Provisions – Investor Submissions



[46] TMX Group submission at 3.
[47] CSA Consultation, note 2 at 30.

Figure 40 Safe Habour Provisions – Issuer/Investor Submissions



Of the 16 industry association submissions, only two mentioned any safe harbours, supporting a safe harbour in whole or part (Figure 41). The third-party submissions engaged with this issue more, with 12 of the 55 submissions making comments: 10 (18%) support a safe harbour and 2 (4%) support a partial safe harbour (Figure 42).

Figure 41 Safe Habour Provisions – Industry Association Submissions

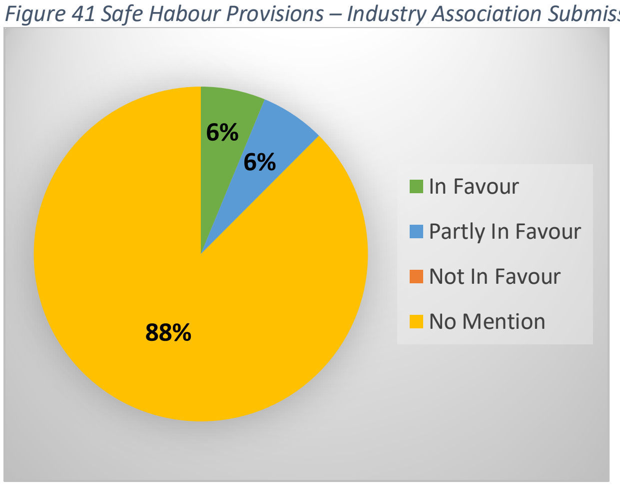
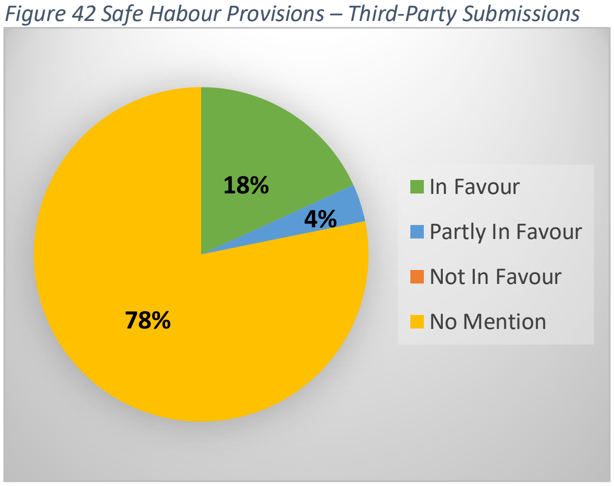


Figure 42 Safe Habour Provisions – Third-Party Submissions



The Canada Climate Law Initiative's submission discusses the issue of safe harbours:

> CCLI recommends a time-limited 'safe harbour' for disclosures that set out quantification of emissions and disclose the financial implications of business plans to reduce emissions and shift economic activity. Such a safe harbour would be based on the certifying officers and the issuer's board of directors being duly diligent in their efforts to disclose, including attesting that they have a reasonable basis for the methodologies used; and based on an acknowledgement that any material change in results will be reported to the market as soon as practicable or at least within 10 days of the date on which the change occurs, as required by NI 51-102.
>
> The current safe harbours in NI 51-102 Continuous Disclosure Obligations for forward-looking information (FLI) and future-oriented financial information (FOFI) are sufficient to cover FLI and FOFI in respect of forward-looking and future-oriented climate-related disclosures. Part 4A of NI 51-102 requires the issuer to have a reasonable basis for the FLI; it must identify FLI as such and caution users that actual results may vary; it must identify material risk factors that could cause actual results to differ materially from the FLI; must state the material factors or assumptions used to develop the FLI; and describe the reporting issuer's policy for updating the FLI.41 Part 4B specifies that a reporting issuer must not disclose FOFI or a financial outlook unless the FOFI or financial outlook is based on assumptions that are reasonable in the circumstances. The disclosure must be limited to a period for which the information can be reasonably estimated; use the accounting policies the reporting issuer expects to use to prepare its historical financial statements for the period covered by the FOFI; disclose as required by Part 4A; the issuer must state the date management approved the FOFI or financial outlook if the document containing the FOFI or financial outlook is undated; and must explain the purpose of the FOFI or financial outlook and caution readers that the information may not be appropriate for other purposes.
>
> These safeguards effectively cover future-oriented and forward-looking climate-related disclosure and do not need amendment. However, a safeguard for disclosing current emissions and financial information based on available technologies and methodologies that continue to improve would make sense for a temporary interim period. Such a safeguard will incentivize issuers and their officers to make best efforts to be accurate and comprehensive. The language could mirror the above provisions, particularly the cautionary language, the material risk factors, transparency in the assumptions and methodologies used to develop the disclosure, officer certification of the rigour of the disclosure given existing information and methodologies, and audit assurance of the process. We note that the Expert Panel on Sustainable Finance recommended a safe harbour for climate-related financial disclosures made in good faith. The Expert Panel noted that such a safe harbour rule would protect directors and officers from legal or regulatory liability over reported information, contingent on the proof of adequate processes and controls for reporting rigour, and would encourage increased reporting while climate information continues to develop.[48]

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[48] CCLI submission at 9-10 (footnotes omitted).

10. Scenario analysis disclosure

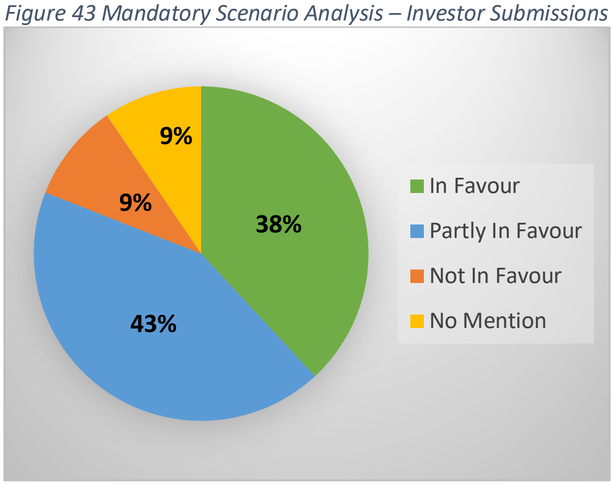
The CSA posed the question: "Under the Proposed Instrument, scenario analysis would not be required. Is this approach appropriate? Should the Proposed Instrument require this disclosure? Should issuers have the option to not provide this disclosure and explain why they have not done so?"[49] The CSA's rationale for not mandating scenario analysis was that it is sensitive to concerns related to regulatory burden and additional cost, and thus, issuers will not be required to disclose scenario analysis, including a 2°C or lower scenario.[50]

Of the 21 investors submissions, 8 (38%) support mandatory scenario analysis, 9 (43%) are partly in favour, 2 (9%) are not in favour, and 2 (9%) do not mention the topic in their submission to the CSA (Figure 43). Generally, those submissions partly in favour of scenario analysis suggested it be on a comply-or-explain basis.

Of the six issuer/investors who made submissions, 1 (17%) is in favour, 2 (33%) are partly in favour, and 3 (50%) are not in favour (Figure 44).

Of the 23 issuers who provided submissions, 1 (4%) supports mandatory scenario analysis disclosure, 3 (13%) are partly in favour of disclosure of scenario analysis, 16 (70%) were not in favour, and 3 (13%) did not comment (Figure 45). The submissions not in favour supported the approach proposed by the CSA and recommended that issuers be permitted to report on a voluntary basis; others had some concern regarding the consistency of scenario reporting and the regulatory burden imposed.

Figure 43 Mandatory Scenario Analysis – Investor Submissions



[49] CSA Consultation, note 2 at 13.
[50] CSA Consultation, note 2 at 2.

Figure 44 Mandatory Scenario Analysis – Issuer/Investor Submissions

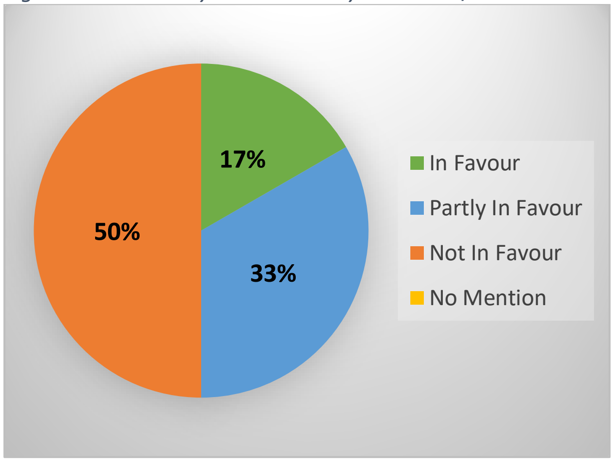
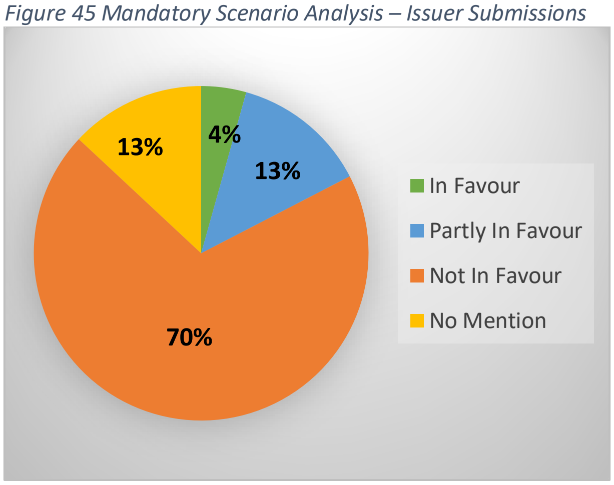


Figure 45 Mandatory Scenario Analysis – Issuer Submissions



The Canada Post Corporation Pension Plan, with over $30 billion in assets under management, recommended requiring scenario analysis:

> The Proposed Instrument should require mandatory scenario analysis by all issuers. Further, we recommend that companies be required to consider a scenario that limits global warming to 1.5°C with limited or no overshoot.
>
> This type of disclosure is critical to helping investors understand corporate preparedness for various potential future outcomes. The Task Force notes that scenario analysis is an important tool for organizations to use in their strategic planning processes, and can help organizations consider a broader range of assumptions, uncertainties, and potential future states when assessing financial implications of climate change. Further, the TCFD's 2021 guidance document, Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures, included a specific update to the guidance on the scenario analysis in that the recommended disclosure has been "revised to more explicitly address disclosure of potential financial impacts on organizations".

> The Bank of Canada and the Office of the Superintendent of Financial Institutions (OSFI) concluded from their recent pilot that scenario analysis is a useful tool for identifying potential risks in an environment of considerable uncertainty, and that it provides a flexible "what-if" framework to explore how the risks may manifest in the future. The pilot report noted that they hear from pilot participants that bottom-up scenario analysis "helped them identify data gaps, explore new methodologies and develop a deeper understanding and awareness of the impacts of the climate transition on their portfolios".
>
> We recognize that not all issuers have developed the capabilities to undertake scenario analysis. Thus, the CSA could vary requirements for reporting on climate scenario analysis for firms as a reflection of the material risk they face and resources. For example, higher standards should apply to larger firms due to their importance for financial sector or general market stability. Whereas smaller firms that face material financial risk from climate change could be given the flexibility to utilize qualitative or narrative-based scenarios aimed at improving their understanding of key issues such as changing carbon prices or potential physical risk exposures under different temperature scenarios. Expectations could become more rigorous over time as capacity builds.
>
> It is important to note that the ISSB's Climate-related Disclosures Prototype (developed by the Technical Readiness Working Group) includes disclosure of scenario analysis, including:
>
> - which scenarios were used for the assessment and the sources of the scenarios used,
> - an explanation of why the entity believes the chosen scenarios are relevant to assessing its resilience to climate-related risks and opportunities,
> - the time horizons over which the analysis has been conducted,
> - the inputs into the scenario analysis, management's assumptions about the way the transition to a lower-carbon economy will affect the entity, and
> - the results of the analysis together with an assessment demonstrating how the entity's financial position and financial performance supports the resilience of the entity's strategy and business model over the short, medium, and long term.
>
> Thus, it is likely that most Canadian issuers will be required to undertake disclosure on scenario analysis in the foreseeable future and the Proposed Instrument should be aligned with this direction of travel. The CSA could play a critical role here by establishing standardized assumptions and/or issuing minimum requirements for scenario analysis. We encourage the CSA to work with other regulators and standard setters to ensure global consistency. There are already many open-source resources to assist issuer (e.g. through the TCFD knowledge hub, etc).[51]

The British Columbia Investment Management Corporation (BCI), an investment manager with over $199 billion in assets under management and one of the largest institutional investors in Canada, also explained why scenario testing is important:

> It is our view that the approach taken in the Proposed Instrument is not appropriate and presents a gap in disclosure if scenario analysis is not required for at least some companies. While we would agree that scenario analysis is not material for all

[51] Canada Post Corporation Pension Plan submission at 3-4.

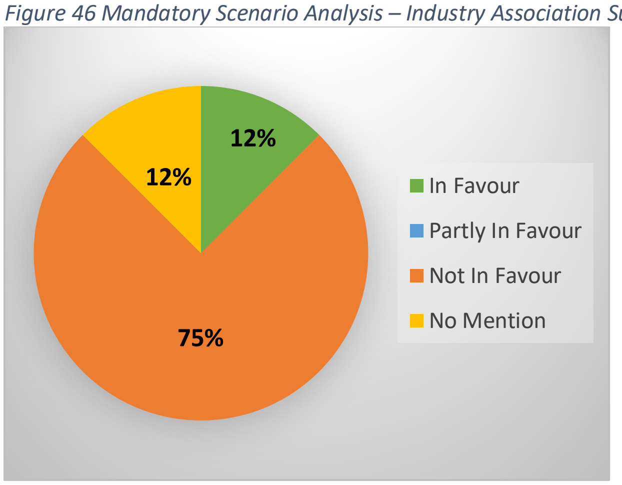
companies or industries, it is material for those that are capital-intensive with long life assets. Scenario analysis provides important context for a company's capital allocation strategy and gives investors an understanding of how resilient a company's strategy is in light of various scenarios.

Despite scenario analysis being in the earlier stages of development, simply knowing if an issuer has considered various scenarios in their capital planning processes is useful information. The scenarios used, parameters tested, and key assumptions made provide investors with valuable insight into the rigour in which climate related risks and opportunities have been integrated into the company's oversight mechanisms, culture and operations. The CSA could provide additional guidance to those industries where it is considered material, such as those identified by the TCFD, within the Proposed Policy and require this on a comply or explain basis. This would be more flexible for issuers and would not require disclosure for industries where it is not as material. It is also important to note the Technical Readiness Working Group of the IFRS has drafted a prototype climate change standard and it does include scenario analysis. This indicates the direction of travel at the global level.

Scenario analysis does not need to be an exhaustive process that requires an issuer to build scenarios from scratch. Seeing that there is wide variation in how society will actually achieve net zero by 2050, it is important for those companies making long term investment decisions to at least reference and consider a range of pathways that are both more conservative and more aggressive in terms of policy action and technological advancement. A sound strategy should do this in the normal course of business as issuers already stress test, challenge their assumptions, consider alternatives, etc. Scenario analysis can be thought of as an extension of this existing business planning process.[52]

Of the 16 industry associations who made submissions, 2 (12%) support mandatory scenario analysis disclosure, 12 (75%) were not in favour of mandatory scenario analysis and two submissions did not comment (Figure 46).

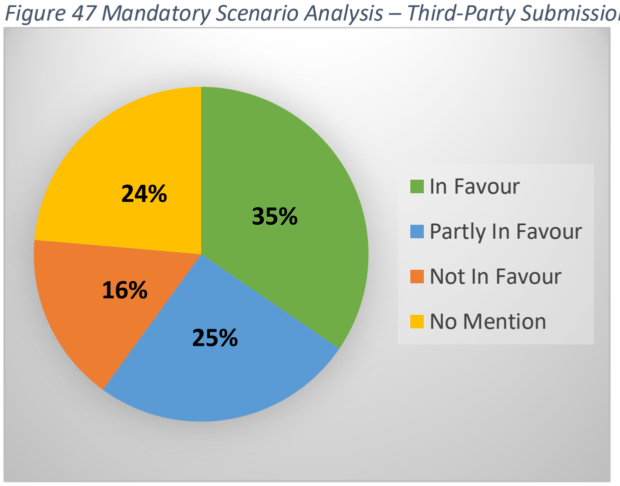
Figure 46 Mandatory Scenario Analysis – Industry Association Submissions



[52] British Columbia Investment Management Corporation submission at 2-3.

Of the 55 third-party submissions, 19 (35%) were in favour, 14 (25%) were partly in favour, generally favouring scenario analysis on a comply-or-explain basis, and 9 (16%) were not in favour, supporting the proposed approach by the CSA not to require such disclosure (Figure 47).

Figure 47 Mandatory Scenario Analysis – Third-Party Submissions



The Canadian Institute of Actuaries (CIA) made extensive submissions on scenario analysis:

> The CIA believes the CSA Proposed Instrument should require reporting issuers to provide a section on scenario analysis aligned with TCFD requirements for the following reasons:
>
> a) In their Final Report, the Expert Panel on Sustainable Finance recommended a mandatory phased "comply-or-explain" implementation of TCFD recommendations for Canadian companies.
>
> b) There is an overwhelming body of evidence that GHGs emitted by human economic activities are the main drivers of climate change and increasing evidence that this will lead to damage to many parts of the global economy beyond what is currently observed; thus, the predictive power of historical data to guide future experience is gradually declining and a forward-thinking lens seems a sound approach.
>
> c) We live in a complex, interconnected world. Non-traditional, forward-looking approaches like scenario analysis are required given the high degree of uncertainty.
>
> d) Stakeholders' interest in the Proposed Instrument is a driver of greater disclosures. These stakeholders include: i. regulators like the Office of the Superintendent of Financial Institutions (OSFI); ii. the CEOs of Canada's eight leading pension plan investment managers; iii. rating agencies; and iv. the Government of Canada as per the December 16, 2021, mandate letter issued to Minister of Finance as mentioned above.
>
> e) If the CSA does not require reporting issuers to provide a section on scenario analysis, there will be no incentive for issuers to start the journey towards full TCFD disclosure. This will lead to i. gaps in information available to the investment community making it more difficult to manage climate change related risks; ii. missed opportunities for issuers to invest in, and benefit from, a strategic decision-making tool as described below; and iii. difficulties for the CSA to amend its rules in the future to reintroduce scenario analysis.

In our view, it is better to define the endgame now, enshrine it in the rules, and assist issuers through guidance along the journey from qualitative to quantitative scenario analysis.

Inherent value of scenario analysis for strategic purposes

The CIA believes scenario analysis is a common and valuable risk management tool. Its exploratory nature can help to guide strategic decision-making given uncertainty. Issuers could therefore imagine and construct plausible futures (scenarios) that could materially impact their business models. This would be relevant information, not only from a compliance point of view but from a strategic point of view.

a) The purpose and use of scenario analysis is to test the resilience of the issuer's strategy across various physical, transition and legal scenarios associated with climate change. It is part of a risk management process whose aim is to reduce losses, manage uncertainty and optimize decision-making to improve performance. Extract from the TCFD Technical Supplement:

> Scenario analysis is a well-established method for developing strategic plans that are more flexible and robust to a range of future states. It is particularly useful for assessing issues with possible outcomes that are highly uncertain, that play out over the medium to longer term, and that are potentially disruptive. Scenario analysis can help organizations better frame strategic issues; assess the range of potential management actions that may be needed; engage more productively in strategic conversations; and identify indicators to monitor the external environment. Importantly, climate-related scenario analysis can provide the foundation for more effective engagement with investors on an organization's strategic and business resiliency.

It is important to have at least two severe but plausible scenarios, including a transition to a low carbon economy (as recommended by TCFD and also used by the Bank of Canada/OSFI).

Current challenges associated with scenario analysis

The CIA recognizes that we are at the early stages (late infancy) of assessing and quantifying climate-related risks. There are varying degrees of maturity in developing risk appetite and strategy for climate-related risks by issuers.

…

The CIA encourages the CSA to foster a glide path approach from qualitative to quantitative scenario analysis to reflect over a determined period the evolving nature of climate risk regulation, data use and reporting practices, and commonly accepted challenges with scenario analysis.

…

Recommendation: mandated scenario analysis

The CIA believes:

a) TCFD compliance is a journey. It is important to pave the way, and anchor future analysis on solid grounds. Qualitative assessment can help in this pathway. Scenario analysis is not a one-off exercise. Instead, it will be replicated over time as new signals and changes in risk drivers occur. There will be integration within a feedback loop.

b) Issuers of securities have an important role in providing decision-useful, relevant, material information to support the Canadian financial sector in enhancing the disclosure of climate-related risks.

> c) The aim of the CSA consultation is to ensure securities regulations maintain relevance in today's world and keep up with global standards. The practice of scenario analysis is young, but TCFD provides room for disclosures appropriate to the issuer's capacity and progress.
> d) Overall, issuers need to build their climate scenario analysis capability.
> a. Without scenario analysis the disclosures would lose a lot of their impact and it would be difficult to bring it back in later on.
> b. Legitimate concerns that these disclosures would simply become siloed out as an extra bit of regulatory burden and administrative paperwork, rather than being integrated into the company and building climate-resilient strategy.
> e) The CSA could issue guidance defining an initial phase on the scenario analysis glide path by specifying a set of scenarios to be used by issuers in their analysis, akin to a safe harbour of compliance. The CIA can assist the CSA with this. A good place to start could be the newly released report by the Bank of Canada/OSFI, Using Scenario Analysis to Assess Climate Transition Risk.[53]

The Engineers and Geoscientists BC also expressed concern about the CSA's approach to scenario analysis:

> It is not clear to Engineers and Geoscientists BC why the CSA is taking a different approach to the Task Force on Climate Related Financial Disclosures in not requiring scenario analysis. The future we are heading into is not well represented by past data or trends, and in this absence of experiential evidence, scenario planning is known to be an effective risk management tool. The point of having forward looking analysis is not to predict the future accurately; its value is in ensuring that an organization-wide approach to preparedness exists. The lack of standardization on scenario planning does not wholly eliminate its utility. In fact, we would look to the CSA to institute the need for scenario planning, consistent with the Task Force on Climate Related Financial Disclosures and in collaboration with the new International Sustainability Standards Board headquartered in Canada. For the proposed instrument to be an effective tool for risk management, scenario planning needs to be included as it helps in guiding strategy and investment decisions in all types of organizations.
>
> Engineers and Geoscientists BC has the mandate to protect the public interest and the environment relating to the practice of professional engineering and geoscience. Addressing climate change considerations is fundamental to Engineers and Geoscientists BC's mandate. We would like to understand whether the proposed instrument will include the reporting on physical climate-related risks, or the condition of natural assets / nature-related risks, in light of the emerging Taskforce on Nature-related Financial Disclosures (TNFD). While there is a lack of standardization on scenario planning in relation to transitioning to a lower-carbon economy, there are several tools available to assess physical risks issued by the International Standards Organization (e.g., ISO 14090 series), Engineers and Geoscientists BC's Professional Practice Guidelines, and various climate risk engines used to carry out investment-grade analyses by developers, governments, and insurers. These tools lend themselves well to the development of risk reduction or management actions which can then be applied at an asset-level (fit-for-purpose over design life) or systems-level (impacts to supply

[53] Canadian Institute of Actuaries submission at 3-8. This submission contains much more detail.

chain or operations). Sector-specific Climate Risk Matrices may help to focus disclosures on key physical risks, as already available for commercial real-estate and electrical transmission and distribution.

There are also well-developed methodologies and frameworks applied in addressing physical climate risks. These include:

- insurance linked securities such as catastrophic bonds, which allow an issuer to access higher levels of capital on the basis of a "triggering event", or parametric solutions which provide a payout based on the threshold of specific hazard incidence in a given geographic area;
- climate adaptation and resilience investments financed by green/climate/sustainability bonds; and, those that relate to environmental impact assessments, and climate impact assessments (such as the Federal Climate Lens) carried out on infrastructure projects.

In closing, we would encourage the CSA to reconsider the need for scenario planning and modelling. From our perspective, we see the need for better clarity in the proposed instrument regarding reporting on physical climate risks. We ask that the reporting on physical climate risks should at a bare minimum include those physical hazards that can be reasonably foreseen.[54]

11. Venture issuer disclosure of climate-related matters

Proposed NI 51-107 states that the disclosure requirements will be phased-in over a three-year period for venture issuers, in the financial years beginning on or after January 1 of the third year after the effective date of the proposed Instrument.[55] The CSA asked whether further accommodations are needed for venture issuers or whether venture issuers should be exempted from some or all of the requirements of the proposed instrument.

Of the investor submissions, 6 (29%) supported including venture issuers in NI 51-107 disclosure requirements, with no exemptions other than phased-in timing, 2 (9%) were in partial favour, suggesting that governance and risk management should be disclosed in the same timeframe as non-venture issuers, and 1 (5%) was not in favour, while 12 (57%) submissions made no mention of the issue (Figure 48).

Of the six issuer/investor submissions, two supported including venture issuers and four made no submission on this issue (Figure 49).

Only 4 of the 23 issuer submissions expressed an opinion on venture issuers, with 3 (13%) in favour of including them under the NI 51-107 disclosure requirements, 1 (4%) not in favour, and 19 (83%) not commenting (Figure 50).

[54] Engineers and Geoscientists BC submission at 2.
[55] CSA Consultation, note 2 at 3, 9.

Figure 48 Include Venture Issuers in NI 51-107 Disclosure Requirements – Investor Submissions

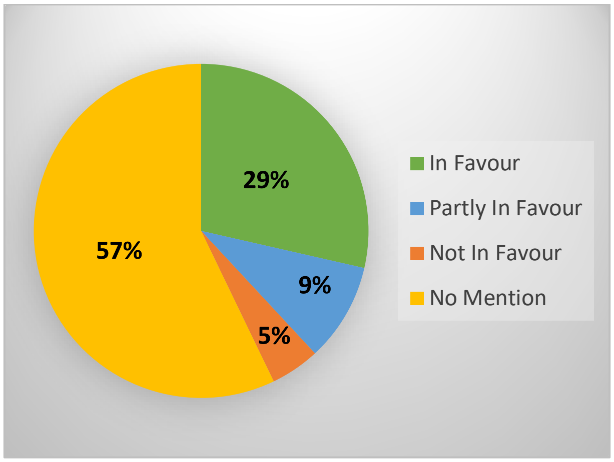


Figure 49 Include Venture Issuers in NI 51-107 Disclosure Requirements – Issuer/Investor Submissions

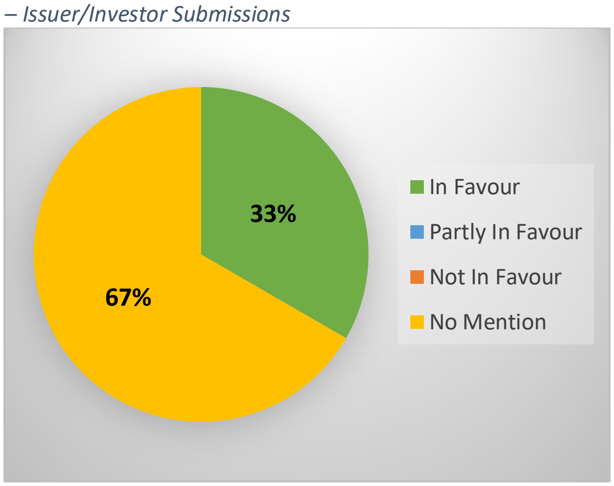
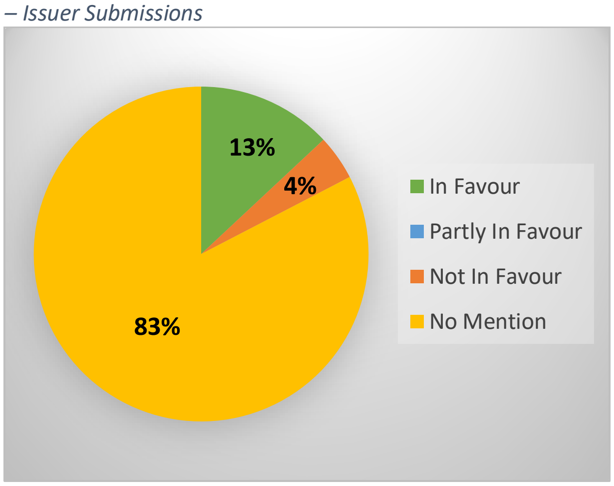


Figure 50 Include Venture Issuers in NI 51-107 Disclosure Requirements – Issuer Submissions



Of the 16 industry association submissions, six expressed an opinion, with 2 (12%) in favour of including venture issuers, 4 (25%) not in favour, and 10 (63%) not commenting (Figure 51).

Of the 55 third-party submissions, only 13 took a position on venture issuers being included in the proposed national instrument, with 7 (13%) in favour, 2 (4%) in partial favour, 4 (7%) not in favour, and 42 (76%) not commenting (Figure 52).

Figure 51 Include Venture Issuers in NI 51-107 Disclosure Requirements – Industry Association Submissions

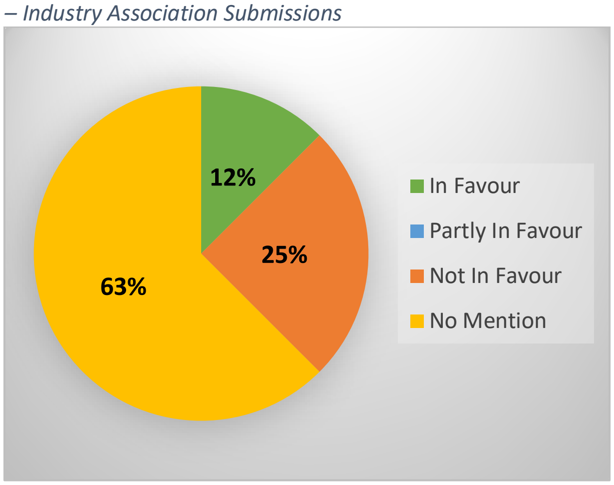
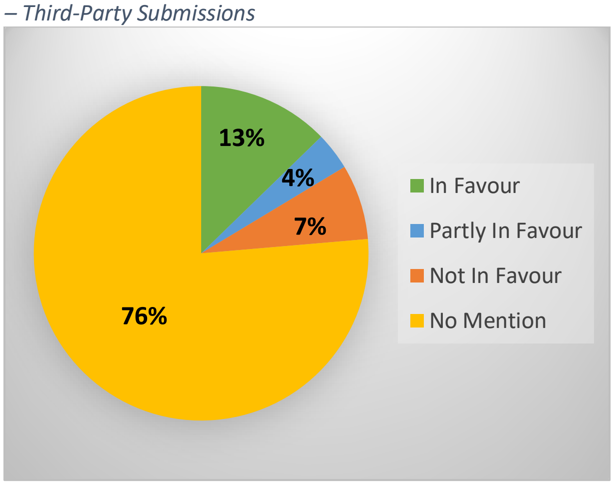


Figure 52 Include Venture Issuers in NI 51-107 Disclosure Requirements – Third-Party Submissions



The Canadian Coalition for Good Governance made comprehensive submissions on the issue of venture issuer disclosure:

> We do not agree with the three-year transition period for venture issuers as described in the Proposed NI 51-107. The proposed 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 from this group is mandated to be made available to investors. We would recommend that governance and risk management disclosures should be required from venture issuers within one year of the effective date with the effect that all issuers, both

venture and non-venture, would be disclosing under these pillars at the same time. These two disclosures are foundational to pivoting the board and management toward integrating climate related risks and opportunities into a company's oversight, strategy and business planning. They are also not contingent on materiality analysis. Other disclosures should be gradually phased in for venture issuers over a four-year period as set out in more detail below.

…

For venture issuers we would support a slightly longer time frame for full implementation contingent on the provision of incremental disclosures sooner. TCFD first published its recommendations in 2017. Two years have passed since the CSA issued guidance on climate risk disclosure expectations which drew on the physical and transition risk recommendations of the TCFD. CCGG announced its public support for the TCFD in June 2020. More than a year has passed since the last consultation on climate-aligned disclosure was conducted by the Ontario Capital Markets Modernization Taskforce and almost a year has passed since that Taskforce made its final recommendations in January 2021. The Ontario government directed the OSC to work on ESG disclosure rules in its March 2021 budget. The US SEC has indicated it is moving forward with climate-related disclosures and held a preliminary consultation in the spring of 2021 that asked questions related to alignment with external framework. The writing has been on the wall for a significant period of time that climate-related disclosures would be forthcoming and that disclosures would likely draw heavily on the TCFD framework.

Larger more sophisticated public companies are already making some climate-related disclosures including with respect to greenhouse gas emissions. 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 venture issuers to implement the disclosure requirements in an incremental and iterative manner wherein they can build on work year over year. Therefore, we do not agree with the CSA's proposed approach with respect to venture issuers.

Proposed alternate approach for venture issuers:
For venture issuers, we recommend that the CSA revisit and adapt the phased approach outlined by the 2019 Expert Panel on Sustainable Finance, which broke down implementation requirements by market cap and complexity such that Phase One encompasses less-complex aspects of the TCFD aligned disclosures and would be achieved sooner whereas Phase Two tackles the more complex aspects of reporting with a longer time to implement. In addition to the phased approach generally, as noted above, we would further recommend that governance and risk management disclosures be required for venture issuers within one year of the effective date of the Proposed NI 51-107. These pillars of disclosure are not contingent on materiality assessments and are the building blocks required for companies to progress toward other required components of the proposed disclosure.

…

We are of the view that the approach recommended by the CSA will be resource intensive for venture issuers because it is not a phased-in implementation, rather it is a delayed reporting requirement that creates the expectation that venture issuers will have complete reporting under all four pillars after three years. This has the potential to create a heavily resource intensive "compliance crunch" in year three rather than a smooth

> ramp up that would allow a more efficient allocation of time and resources as expertise within the company grows. This was the intended process for TCFD and why it is colloquially described as a "journey".
>
> Additionally, from a resource perspective, our recommendation to require less onerous governance, risk management and other Phase One aligned disclosure sooner, should not be intensive, as we are asking about how they govern and manage climate change. This may not necessarily mean dedicated resource, especially if the issuer is small and less complex.[56]

12. Broader environmental, social and governance (ESG) disclosure

The CSA consultation document notes that in its comment letter to the IFRS Foundation in 2020, it observed 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. It asked during the consultation: "What broader sustainability or ESG topics should be prioritized for the future?"

Overall, the investor submissions were the most vocal on the need to move towards broader ESG disclosure. 33% of submissions called for regular review of disclosure, many suggesting bi-annually as the CSA moves on the path towards environmental, social, and governance (ESG) disclosures.

Six submissions discussed the need for a just transition to net-zero emissions, all from third-party organizations. For example, the joint submission of Ecojustice, Environmental Defence, Shift Action for Pension Wealth and Planet Health, and Greenpeace submitted:

> Disclosure is important for risk management, yet at this point, is insufficient (Caldecott, 2020). Regulation beginning with 51-107 onwards should demonstrate a norm of moving to eliminating carbon emissions and advancing climate justice in order to reduce the systemic risks from climate change. ESG Regulation should include, for all issuers:
>
> ● Double-materiality reporting: both the climate risks to an issuer/portfolio and the climate implications of activities (European Parliament, 2021).
>
> ● Decarbonization targets that align with the Paris Agreement, Canada's NDC and 2030 and 2050 emissions reduction targets, and are science-based, comprising Scope 1, 2, and 3 emissions. These targets should align with a company's fair share based on historical emissions, and be at least as ambitious as Canada's emissions reduction target of 45% by 2030 based on 2005 levels.
>
> ● Just transition (environmental justice) principles, including
>
> ○ alignment with UNDRIP and respect for Indigenous governance, including a commitment to Indigenous peoples' right to free prior and informed consent,
>
> ○ support for workers and communities impacted by the climate transition,
>
> ○ support for communities impacted by physical climate damage,
>
> ○ contributions to climate mitigation and adaptation that align with a company's fair share based on historical emissions,

[56] Canadian Coalition for Good Governance submission at 14-16 (footnote omitted).

- Assurance that issuers are protecting biodiversity and are "nature-positive" as defined by United Nations Environment Programme - Finance Initiative.[57]

There were 21 submissions that discussed the need to improve climate-related disclosure through reconciliation and partnership with Indigenous Peoples.

For example, the Shareholder Association for Research and Education (SHARE) submitted:

> We also propose that the CSA begin consultations on disclosures and oversight relevant to Indigenous peoples and reconciliation. While global ESG standard-setting bodies may develop some limited indicators that are relevant to Indigenous peoples, we are fairly confident that, based on what we've seen to date, they will be insufficient to help drive the kind of change Canadian investors are coming to expect. A comprehensive approach will require the efforts of Canadian regulators and other Canadian capital markets participants.
>
> There is substantial expertise and interest amongst issuers, institutional investors and Indigenous organizations in improving disclosures and oversight of action on reconciliation consistent with the final Calls to Action from the Truth and Reconciliation Commission. Our own experience in driving the Reconciliation and Responsible Investment Initiative (RRII) alongside the National Aboriginal Trust Officers Association and other Indigenous partners has already shown us the depth and breadth of interest in investing in the Indigenous economy and in understanding the contribution of Indigenous people to each issuer's operations and vice versa.
> Developing consistent, useful and comprehensive rules around Indigenous-related disclosures will be a valuable, substantial and uniquely Canadian contribution to sustainability disclosures and will assist the large group of institutional investors and issuers that have shown interest in the area but are hampered by the lack of clear guidance.[58]

13. Regular review and update of securities law climate-related disclosure requirements

The majority submissions urged the CSA to act swiftly to bring NI 51-107 into force to create clarity and certainty, but urged the CSA to strengthen the provisions. Many submissions also recognized the need for timely update of disclosure requirements as capital markets and climate disclosure methodologies are refined.

For example, NEI Investments, which has $11 billion in assets under management, commented on regular review and ESG disclosure:

> 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

[57] Ecojustice, Environmental Defence, Shift Action for Pension Wealth and Planet Health, and Greenpeace submission at 10.
[58] Shareholder Association for Research and Education submission at 14.

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.

…

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.[59]

Finally, beyond the scope of securities regulation, of note is that several submissions pointed out the need for the CSA to work with federal and provincial governments to address the disclosure gap between public and private capital markets.

For instance, BlackRock Asset Management Canada Limited submitted:

> we encourage the CSA to prioritize is addressing the gap between private and public markets in the availability and comparability of climate-related disclosures. This gap could result in regulatory arbitrage. A more concerning unintended consequence of this information gap is the potential that public companies may divest of carbon intensive assets to private companies, which could undermine the incentive to reduce emissions that greater transparency would otherwise encourage. Furthermore, as many investors deploy capital across both public and private markets, we believe that the CSA should work with other financial services regulators and the provincial and federal governments, to mandate climate-related disclosures with respect to large private market issuers. This would benefit all users of this information and may achieve the goals of both reducing information asymmetry and increasing more efficient allocation of capital.[60]

14. Conclusion

It is evident that a lot of careful attention went into the 131 submissions to the CSA, almost all strongly supporting the CSA's stated goals of improving issuer access to global capital markets; assisting investors to make more informed investment and engagement decisions by enhancing climate-related disclosures; facilitating an 'equal playing field' for all issuers through comparable and consistent disclosure; and removing the costs associated with reporting to multiple disclosure frameworks.

In particular, the CSA heard from 27 investors with $21 trillion in assets under management. They represent the financial security of millions of Canadians through pension funds, mutual funds and other investments. Since the purpose of securities law is to protect investors and foster capital markets, the CSA should be paying close attention to these submissions, which have overwhelmingly called for mandatory disclosure of Scope 1 and 2 GHG emissions, embedding that disclosure in financial reporting so that investors have confidence in the accuracy and comparability of the information, and requiring issuers to disclose their plans to transition to net-zero emissions.

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[59] NEI Investments submission at 7-8.
[60] BlackRock Asset Management Canada Limited submission at 9-10.

There are two particularly strong messages across the board: all users of financial statements need to have reliable, relevant, clear, and comparable information on climate-related risks and opportunities, and that it is important for the CSA to act as quickly as possible to create effective and clear disclosure standards that align with international regulatory developments and allow Canadian issuers to effectively compete in domestic and global capital markets.