Stikeman Elliott

Environmental, Social & Governance Law 2026 Canada

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This article was first published in the International Comparative Legal Guide – Environmental, Social & Governance Law 2026 Real Estate 2026.

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International Comparative Legal Guides

Environmental, Social & Governance Law 2026

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Sixth Edition

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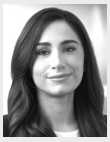
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1 Setting the Scene – Sources and Overview

1.1 What are the main substantive ESG-related regulations and who is driving the regulatory agenda in your jurisdiction?

There are a variety of environmental, social and governance ("**ESG**")-related regulations applicable to federally and provincially incorporated companies; however, the focus of this chapter is on public companies that qualify as "reporting issuers" under applicable Canadian securities and corporate laws, with references to general Canadian corporate law and specific section references to the federal *Canada Business Corporations Act* (the "**CBCA**").

In compliance with the CBCA, corporate directors are required to manage, or supervise the management of, the business and affairs of a company; in doing so, directors must comply with their fiduciary duty and duty of care. The duty of care standard requires directors to act honestly and in good faith with a view to the best interests of the company. Consistent with the Supreme Court of Canada's decision in *BCE Inc. v. 1976 Debentureholders* (2008 SCC 69) ("**BCE**"), section 122 of the CBCA was amended to specifically provide that when acting with a view to the best interests of the corporation, directors may consider, but are not limited to, factors such as the interests of shareholders, employees, retirees and pensioners, creditors, consumers and the government, as well as the environment and the long-term interests of the corporation. When exercising their duty of care and taking corporate action that will affect stakeholders, directors should treat each stakeholder group equitably and fairly and, in resolving competing interests, the directors should evaluate and assess stakeholder interests alongside the best interests of the company with a view to creating a "better" company.

As ESG incorporation relates to the consideration of ESG considerations in respect of a business, a director's fiduciary duty, broadly speaking, encompasses a duty to manage and oversee material ESG-related matters relevant to the company, particularly with respect to risk management, risk mitigation and governance, which may include actively addressing certain challenges and opportunities in the context of specific environmental and social ("**E&S**") matters. While, generally, director fiduciary duties have evolved over time through case law, they can also evolve through legislative amendments.

In Canada, the regulation of capital markets is a matter of provincial and territorial jurisdiction, and while each province and territory has its own securities laws, regulations and rules administered by a local securities regulator, these local securities regulators who form the Canadian Securities Administrators (the "**CSA**") have adopted national instruments and policies that apply in all Canadian jurisdictions. Collectively, these securities laws, policies, rules and instruments are referred to in this chapter as the "**Canadian securities laws**".

Substantive ESG-related requirements are prescribed by the CSA under applicable Canadian securities laws and the rules of the Toronto Stock Exchange (the "**TSX**") and, for the most part, securities laws relating to ESG-related requirements, disclosure and best practices have been harmonised through national instruments and national policies adopted by all of the Securities Commissions. Corporate governance disclosure and best practices are governed by National Instrument 58–101 *Disclosure of Corporate Governance Practices* (the "**Corporate Governance Rule**") and National Policy 58–201 *Corporate Governance Guidelines* (the "**Corporate Governance Guidelines**").

By mandating corporate governance-related disclosure, which is generally to be included in an issuer's management proxy circular, the goal of the Corporate Governance Rule is to provide greater transparency on how issuers apply various corporate governance principles. While the CSA requires issuers to disclose how they deal with certain matters, they also recognise that many corporate governance matters cannot be prescribed in a "one-size-fits-all" manner, and neither the Corporate Governance Rule nor the Corporate Governance Guidelines are intended to prescribe or restrict specific governance matters. The Corporate Governance Guidelines are thus meant to reflect "best practices" that have been formulated with desirable corporate governance principles in mind. Issuers can choose to apply or follow the best practices as set out in the Corporate Governance Guidelines, in whole or in part, depending upon their own unique circumstances, or to explain how they achieve the goals of the related corporate principles.

The "best practices" set out in the Corporate Governance Guidelines include the requirement to adopt a written code of business conduct and ethics, which applies not only to the employees but also the board of directors of the issuer. Although the content and tone of the code are left to the issuer's discretion, the Corporate Governance Guidelines recommend that the following matters be covered by the code: conflicts of interest; protection of corporate assets; confidentiality of corporate information; fair dealing with security holders and others; compliance with laws; and reporting of illegal or unethical behaviour. While these subject areas may be seen to form the core "ethical" components of an internal ESG framework, given the broad scope of matters covered by ESG, a number of social and governance matters have evolved to be covered expressly under applicable codes of conduct or ethics. These include business ethics, human rights protection, anti-harassment and workplace wellness, supply chain governance, cybersecurity and community relations, as well as anti-bribery and corruption, environmental protection, equity and inclusion. However, these are often, if

not always, accompanied by more specific ESG-related policies, reports or disclosures.

A set of corporate governance-related amendments have also steadily increased prescriptive governance regulation under the CBCA, including in respect of majority voting for directors, enhanced record-keeping, detailed disclosure relating to board diversity, and a more shareholder-friendly framework for submission of shareholder proposals. Under the adopted majority voting standards, nominees for board positions must receive at least 50% of the votes cast in support of their election in order to be elected. A similar policy has been imposed by the TSX for many years, although unlike the CBCA, the TSX policy affords discretion to boards to permit a director who fails majority vote to continue to serve in exceptional circumstances. Shareholders of CBCA companies may submit proposals, and CBCA Issuers are required to disclose in their management proxy circular, closer to the date of the corporation's annual meeting of shareholders – the final date by which a shareholder proposal must be submitted for the following annual meeting of shareholders.

The TSX also substantively regulates governance through various policies or restrictions. These include requirements relating to director independence, as well as restrictions against staggered boards and slate voting through the requirement for annual elections for individual directors. As noted above, the TSX also requires its listed companies to adopt majority voting policies, which require voluntary resignation by directors who fail to garner a majority of "for" votes in director elections, although they have been supplanted, to an extent, given recent changes in corporate law that have a similar effect.

In efforts to provide further clarity and facilitate consistency and comparability among issuers, in October 2021, the CSA published the CSA Consultation Climate-related Disclosure Update and CSA Notice and Request for Comment Proposed National Instrument 51–107 *Disclosure on Climate-related Matters* ("**NI 51–107**"), a series of securities regulations meant to introduce disclosure requirements regarding climate-related matters for reporting issuers (other than investment funds). Governance-related proposed climate disclosure would be included in a reporting issuer's management information circular, and proposed climate disclosure related to strategy, risk management, risk metrics, and targets would be included in the issuer's Annual Information Form ("**AIF**"). However, in April 2025, the CSA announced a pause on introducing new prescriptive disclosure requirements, including the proposed NI 51–107. This decision aims to support Canadian markets and issuers as they navigate evolving global economic conditions and a rapidly shifting geopolitical landscape (CSA, *CSA updates market on approach to climate-related and diversity-related disclosure projects*, April 23, 2025). Shortly after the CSA proposal of NI 51–107 in October 2021, the International Sustainability Standards Board (the "**ISSB**") formed a sustainability standard-setting body associated with the International Financial Reporting Standards (the "**IFRS**") Foundation, and subsequently released two sustainability disclosure standards in June 2023 (IFRS S1 and IFRS S2 (collectively, the "**ISSB Standards**")). As a result, the CSA largely undertook to reconsider their approach in light of the ISSB developments and are actively evaluating implementation plans for Canadian public companies. On March 13, 2024, the Canadian Sustainability Standards Board (the "**CSSB**") released proposed Canadian sustainability disclosure standards, using the ISSB Standards as a foundation. These are discussed further in question 1.2 below.

One of the most noteworthy developments in ESG-related regulations has been the enactment of the *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, which came into force on January 1, 2024 (the "***Modern Slavery Act***"). The *Modern Slavery Act* applies to prescribed Canadian "entities" that produce, sell, or distribute goods in Canada, import foreign goods into Canada or control entities that do, requiring them to produce annual public reports about their corporate structure and supply chains that detail the company's actions towards eliminating forced labour and child labour. Specifically, Canadian entities cover a corporation or a trust, partnership or other unincorporated organisation that either: (1) is listed on a Canadian stock exchange; or (2) has a place of business in Canada, does business or has assets in Canada and that meets at least two of the three following size requirements based on consolidated financial statements:

- has at least CA$20 million in assets;
- generated at least CA$40 million in revenue; or
- employs an average of at least 250 employees.

The legislation also amends the *Customs Tariff* to prohibit the importation of goods produced by either forced or child labour. The annual report must be filed with the Minister of Public Safety and Emergency Preparedness and published on the entity's website before May 31 of each year. Persons and entities that fail to comply with certain provisions of the *Modern Slavery Act*, including a failure to file and publish their report, are guilty of an offence punishable on summary conviction and liable to a fine of no more than CA$250,000. Further, the *Modern Slavery Act* extends liability to an entity's directors, officers, agents and mandataries to the extent that they directed, authorised, assented to, acquiesced in or participated in the commission of an offence.

The 2024 Annual Report to the Canadian Parliament on the *Modern Slavery Act* reveals that 71.3% of entities reported having policies and due diligence procedures in place to address forced labour and/or child labour (Public Safety Canada, *2024 Annual Report to Parliament on the Fighting Against Forced Labour and Child Labour in Supply Chains Act*, February 18, 2025). Notably, on December 16, 2024, the Government of Canada released the *2024 Fall Economic Statement*, announcing plans to introduce new measures to support its forced labour efforts including a supply chain due diligence regime, the creation of an oversight agency, amendments to the existing import ban, and increased funding for Global Affairs Canada and the Canada Border Services Agency to support enforcement (Department of Finance Canada, *2024 Fall Economic Statement*, December 16, 2024).

The basic approach taken by Canada follows that of the UK, California, and Australia, by requiring entities to focus their disclosure on the steps they are taking to ensure that forced labour and child labour are not present in their supply chains. This "reporting" approach is less demanding than the "diligence" approach underlying the French and German legislation, which requires entities to actively investigate their suppliers and to report on the results of those investigations. However, unlike some other jurisdictions, Canada also requires that a report addressing a list of specified topics be filed with the government for publication on a searchable government website.

1.2 What are the main ESG disclosure regulations and how have they evolved during the past 12 months?

Reporting issuers are subject to specific reporting requirements in periodic disclosure documents, which are required to be filed under applicable Canadian securities laws. These include Financial Statements (in accordance with the IFRS), Management's Discussion & Analysis ("**MD&A**", under Form 51–102 F1), AIFs (under Form 51–102 F2), and Information Circulars (under Form 51–102 F5), which include Executive Compensation (under Form 51–102 F6), and Disclosure of Corporate Governance Practices (under Forms 58–101 F1 and F2).

In addition to these periodic disclosure requirements, reporting issuers are also required to make timely disclosure of material changes (under Form 51–102 F3) and, under applicable TSX rules, timely and accurate disclosure of material information. These general periodic and timely disclosure requirements encompass various disclosures relating to ESG issues under Canadian securities rules, and the CSA encourage reporting issuers to demonstrate ESG considerations in their applicable disclosure filings. Some of these requirements are discussed in further detail below.

Pursuant to the Corporate Governance Rule and Form 58–101 F1 *Corporate Governance Disclosure* ("**Form 58–101 F1**"), reporting issuers are required to disclose certain prescribed information relating to board and committee duties and responsibilities as well as board independence, composition, education, and board and committee self-assessments (the requirements of which differ among venture companies and those listed on the TSX or other non-venture exchanges). While these requirements have remained relatively static since inception, they were substantively expanded to include prescribed disclosure with respect to the representation of women on boards of directors, in the director identification and selection process, and in executive officer positions (the "**Diversity Disclosure**").

Generally, the Diversity Disclosure follows a "comply or explain" model, which does not require issuers to adopt any particular form of policy with respect to board appointments and the appointment of senior management. Rather, the approach provides flexibility and allows issuers to determine the considerations and policies with respect to board nominations and the appointment of senior management that are appropriate to their particular circumstances.

Under these rules, an issuer is required to include disclosure, as set out in Form 58–101 F1, in its management information circular any time that the issuer solicits a proxy from a security holder for the purpose of electing directors to its board of directors (or equivalent).

Under Form 58–101 F1, each TSX-listed reporting issuer to whom the Corporate Governance Rule applies is required to disclose the following:

- Whether the board has adopted term limits for directors or other mechanisms for board renewal and, where adopted, a description thereof.
- Whether the issuer has adopted a written policy relating to the identification and nomination of women directors and, where adopted, a summary of its objectives and key provisions, the measures taken to ensure that the policy has been effectively implemented, annual and cumulative progress by the issuer in achieving the goals of the policy and whether, and if so, how the board or its nominating committee measures the effectiveness of the policy.
- Whether, and if so, how the board or nominating committee considers the level of representation on the board in identifying and nominating candidates for election or re-election to the board.
- Whether, and if so, how the issuer considers the level of representation of women in executive officer positions when making executive officer appointments.
- Whether the issuer has adopted targets for women on the board and in executive officer positions and, if adopted, disclosure of the target and the annual and cumulative progress of the issuer in achieving such target(s).
- The number and proportion (as a percentage) of directors on the issuer's board and of executive officers of the issuer and its major subsidiaries who are women.
- Where an issuer has not adopted any of the components described above (i.e., term limits, policies, targets) or does not consider the representation of women on its board or among its executive officers in identifying candidates for such positions, the issuer must disclose why it has not done so.

Under the Corporate Governance Rule and Corporate Governance Guidelines, the CSA may periodically review compliance with these requirements and may order prospective and/or corrective disclosure, but also have the authority to enforce these through other enforcement mechanisms.

While the Corporate Governance Rule focuses on gender representation, amendments to the CBCA that came into force in 2020 expand annual disclosure requirements respecting term limits, diversity policies, and statistics regarding representation of women to include Aboriginal peoples, persons with disabilities and members of visible minorities.

To assist CBCA-incorporated issuers in addressing the CBCA disclosure requirements, Innovation, Science and Economic Development Canada ("**ISED**") have published guidelines intended to encourage a more consistent Diversity Disclosure. Notably, corporations are encouraged to disclose information in tabular format, separate disclosure with respect to boards and senior management, and specifically indicate timelines for targets. CBCA Issuers are reminded that they must also submit this information directly to Corporations Canada in the prescribed manner.

In 2025, ISED published Canada's fifth Annual Report on the diversity of boards and senior management of federal distributing corporations, encompassing a review of 494 distributing corporations, namely the *Diversity of Boards of Directors and Senior Management of Federal Distributing Corporations 2024 Annual Report*. According to the report, 58% of these corporations have at least one woman on the board of directors, women hold 24% of board seats, and 24% have adopted targets for the representation of women on their boards. Similarly, in October 2024, the CSA also published Multilateral Staff Notice 58–317, *Review of Disclosure Regarding Women on Boards and in Executive Officer Positions (Year 10 Report)*, which summarises the review of the disclosure of 574 TSX-listed issuers with year-ends between December 31, 2023 and March 31, 2024 ("**TSX Issuers**"), and it is likely to be, according to the CSA, the last report of this nature. According to Staff Notice 58–317, 90% of TSX Issuers reviewed had at least one woman on their board, 29% of board seats were held by women, 72% had at least one woman in an executive officer position and 44% had adopted targets for the representation of women on their board.

In October 2010, the CSA also published guidance under Staff Notice 51–333 *Environmental Reporting Guidance* to provide insight on satisfying existing continuous disclosure requirements with respect to environmental concerns.

In the context of a wide range of environmental issues, Staff Notice 51–333 focuses on the following types of disclosure:

- *Environmental Risks and Related Matters*. The five key disclosure requirements in National Instrument 51–102 *Continuous Disclosure Obligations* that relate to environmental matters are: environmental risks; trends and uncertainties; actual and potential environmental liabilities; asset retirement obligations ("**AROs**"); and the financial and operational effects of environmental protection requirements, including the costs associated with these requirements:
  - Environmental risks: Issuers are required to disclose risk factors relating to the issuer and its business under item 5.2 of Form 51–102 F2. These risks include litigation risks, physical risks, regulatory risks, reputational risks, and risks relating to business models.
  - Trends and uncertainties: The MD&A should include a narrative explanation of material information not fully

reflected in the financial statements relating to applicable trends and uncertainties, including those that have affected or may affect the financial statements.
    - Environmental liabilities: These can arise from past or ongoing business activities that could impact the environment or involve potential environmental liability due to ongoing or future business activities. With a potential liability, an issuer may be able to prevent liability by changing practices or adopting new practices to reduce negative impacts on the environment.
    - AROs: Item 1.2 of Form 51–102 F2 requires disclosure regarding an issuer's financial condition, results of operations and cash flows including disclosure on commitments or uncertainties that are reasonably likely to affect the issuer's business. Assets are considered retired if they are sold, abandoned, recycled or otherwise disposed of. An ARO is a requirement to perform a procedure rather than a promise to pay cash; as such, legal obligations resulting from the retirement of an asset could manifest.
    - Financial and operational effects of environmental protection requirements: An issuer should disclose financial and operational effects of environmental protection requirements under item 5.1(1)(k) of Form 51–102 F2, including on capital expenditures, earnings, and competitive position.
- *Environmental risk oversight and management*. Two key sets of disclosure requirements provide insight into a reporting issuer's oversight and management of environmental risks: environmental policies implemented by the issuer; and the issuer's board mandate and committees. In relation to environmental policies, a reporting issuer should explain the purpose of its environmental policies and the risks they are designed to address, and evaluate and describe the impact the policies may have on its operations. For an issuer's board mandate and committees, the reporting issuer should disclose the board of directors' (or any delegate committees') responsibility for the oversight and management of environmental risks in a manner that is meaningful to investors.
- *Forward-looking information requirements*. Issuers are advised that disclosing goals or targets with respect to greenhouse gas emissions or other environmental matters may be considered forward-looking information or future-oriented financial information and would be subject to the disclosure requirements generally applicable to such information, including requirements to identify material assumptions and risks.
- *Governance structures around environmental disclosure*. Staff Notice 51–333 provides that a meaningful discussion of environmental matters in an issuer's MD&A and AIF is critical in ensuring fair presentation of the issuer's financial condition. Issuers should therefore consider discussing which environmental matters are likely to impact the business and operations in the foreseeable future and the potential magnitude of anticipated environmental risks and liabilities. An issuer should also have adequate systems and procedures to provide structure around its disclosure of environmental matters, including disclosure controls. The CSA also encourage voluntary reporting and disclosure responsive to third-party frameworks as a means to provide additional information to investors outside of continuous disclosure requirements.

In 2019, the CSA published the CSA Staff Notice 51–358 Reporting of Climate Change-related Risks aiming to improve issuer disclosure, address popularised reports on climate change disclosure and environmental governance topics and respond to increased investor interest in climate change-related risks, particularly among institutional investors. This notice highlights the respective roles of management and the board (and audit committee) in strategic planning, risk oversight and the review and approval of an issuer's annual and interim regulatory filings; while this notice is intended to be a guidance tool, the following practices are suggested for an issuer's board of directors and management:

- Ensure that the board of directors and management have, or have access to, appropriate sector-specific climate change-related expertise to understand and manage climate change-related risk.
- Establish and design disclosure controls and procedures to collect and communicate climate change-related information to support management in assessing materiality and providing timely disclosure.
- Consider the level of integration of climate change-related risks and opportunities in the issuer's strategic plan.
- Assess whether the issuer's risk management systems and methodology, including business unit responsibility, appropriately identify, disclose and manage climate change-related risks.
- Review the CSA's select questions for boards and management designed to inform the assessment of climate change-related risk including whether the board: (a) provided appropriate resources to help members understand sector-specific climate change-related issues; (b) was comfortable with management's methodology used to categorise and assess the nature of climate change-related risks and the materiality of such risks; and (c) considered the effectiveness of the disclosure controls and procedures implemented relative to the climate change-related risks.

This notice emphasises that climate change-related risks are mainstream business issues with the potential to induce long term financial impacts. Furthermore, due to their complex nature and longer evaluation horizons, boards and management should take appropriate steps to understand and assess the materiality of climate change-related risks to their business sooner than later as climate change-related risks may evolve differently from other business risks.

For purposes of assessing materiality, this notice also provides certain considerations specific to climate change-related risk, including:

- **Timing** – issuers should review their materiality assessments to include short-term and long-term risks.
- **Measurement** – boards and management should consider the current and future financial impacts of material climate change-related risks on the issuer's assets, liabilities, revenues, expenses and cash flows over the short, medium and long term. Where practicable, issuers should quantify and disclose the potential financial and other impact(s) of climate change-related risks, including their magnitude and timing.
- **Categorisation of risk and potential impact** – the range of climate change-related risk and its potential financial, operational and business impact may vary depending on the level and scope of the assessment, so consideration should be given to:
    - the physical risks of climate change, including acute (i.e., event-driven) or chronic changes in resource availability and climate patterns, including their impacts on sourcing, safety, supply chains, operations and physical assets;
    - the transitional risks arising from a gradual change to a low-carbon environment, including reputational

risks, market risks, regulatory risks, policy risks, legal risks and technology risks; and
- prospective opportunities resulting from efforts to mitigate and adapt to climate change.

With respect to specific issues related to environmental compliance, risks and opportunities, the ISSB released its first two sustainability disclosure standards, the ISSB Standards, on June 26, 2023. These standards are designed to ensure that entities provide sustainability-related information alongside financial statements in the same reporting package and for the same reporting period. IFRS S1 provides a set of disclosure requirements designed to enable companies to communicate to investors about the sustainability-related risks and opportunities they face over the short, medium, and long term. This includes the approach, governance processes, controls, and procedures an entity uses to monitor and manage sustainability-related risks and opportunities, the processes an entity uses to identify, assess, prioritise and monitor sustainability-related risks and opportunities and an entity's performance in relation to sustainability-related risks and opportunities. IFRS S2 requires disclosure of climate-related risks and opportunities that could reasonably be expected to affect an entity's prospects. Climate-related risks include both physical risks (i.e., risks that arise from weather-related events such as storms, floods or droughts) and transition risks (i.e., policy, legal, technological, market or reputational risks that arise from efforts to transition to a lower-carbon economy). These are discussed in further detail below.

While regulatory bodies continue to consult on the adoption of standards for investor-focused ESG disclosures, recent amendments to the *Competition Act* introduce significant changes to its deceptive marketing provisions that directly impact the potential landscape of ESG disclosure.

In June 2024, Bill C-59 amended the *Competition Act* and introduced two new provisions to section 74.01 to combat greenwashing in the marketplace. These provisions target environmental and sustainability-related misrepresentations made to the public for the purpose of promoting, directly or indirectly, any product or business interest: (i) claims about a product's environmental, ecological, or social benefits in respect of climate change must be based on adequate and proper testing (section 74.01(1)(b.1)); and (ii) any representations about the environmental or ecological benefits of a business or business activity must be based on adequate and proper substantiation in accordance with internationally recognised methodology (section 74.01(1)(b.2)). The term "internationally recognised methodology" is undefined, but the Senate Committee on National Finance has indicated that the term includes methodologies used by the European Union and federal and other Canadian best practices, as well as methodologies from standard-setting bodies such as the ISSB, which is commonly used for climate-related disclosures. According to the Competition Bureau's guidance on environmental claims under the *Competition Act*, a "methodology" is a procedure used to determine something. The Competition Bureau will likely consider a methodology to be "internationally recognised" if it is acknowledged as valid in two or more countries. This can include a variety of sources, such as standards-setting bodies, regulatory authorities or even industries or other entities using methodologies that are commonly accepted internationally, and does not necessarily require that the methodology be recognised by the governments of two or more countries (Competition Bureau, *Environmental claims and the Competition Act*, June 2025).

The new changes represent the Competition Bureau's priority shift towards the green economy and the rise of six-resident complaint applications over the last few years. A significant portion of the complaints the Competition Bureau receives involve general or forward-looking claims about a business or brand as a whole (*Brief to the House of Commons Standing Committee on Finance*, March 2024). The *Competition Act* already contains a general provision under section 74.01(1)(a) restricting materially false and misleading representations, which is not specific to particular sectors, industries or types of claims and does not prohibit aspirational claims. While the existing general provision prohibiting material misrepresentations captures claims about a business or a brand as a whole, proving materiality can be challenging because the burden is on the party alleging misrepresentation. The new greenwashing provisions do not have these kinds of constraints and are most likely to impact forward-looking ESG reporting.

The Competition Bureau cautions businesses that making claims about the future – such as greenhouse gas emissions or achieving carbon neutrality – will be at a higher risk of greenwashing if the general impression they convey is aspirational rather than factual (Competition Bureau, *The Deceptive Marketing Practices Digest — Volume 7*, June 2024). Despite the Competition Bureau taking a stronger stance on greenwashing, no penalties or settlements have yet occurred under the new provisions. Private litigants are anticipated to play a significant role in shaping the interpretation of environmental claims under the *Competition Act*, even though they cannot bring actions directly under the new greenwashing provisions. Private litigants are also expected to influence the interpretation of environmental claims under the *Competition Act* and, by extension, how businesses approach their ESG disclosures. Although private litigants cannot bring court actions directly under the new greenwashing provisions, they may still do so under the general prohibition against materially false or misleading representations given that the new private right of action took effect on June 20, 2025.

1.3 What voluntary ESG disclosures, beyond those required by law or regulation, are customary?

Depending on the business and industry of the reporting issuer and its specific shareholder or investor focus, there are a number of voluntary ESG-related disclosures that issuers may provide. These are impacted or skewed to a certain extent by the prevalence of resource issuers in Canadian capital markets. As such, voluntary disclosures are often focused on the environmental impact of the issuer's operations, including stewardship and sustainability, emissions reduction, water use and management, supply chain governance and asset retirement or reclamation. However, there has also been an increasing focus on governance and social issues, including community relations, health and safety, human rights and diversity. Voluntary corporate sustainability reporting often includes disclosure relating to a company's environmental, social, and economic priorities, performance and impacts, governance and implementation of how these priorities are managed by an organisation, and has a broad focus on sustainability reporting to a broader group of stakeholders as opposed to a primary focus on investors and financial analysts. A survey of the disclosure practices of the S&P/TSX Composite Index constituents indicates that 73% of companies released a sustainability report (or ESG report) in 2023, while corporate S&P/TSX 60 issuers with dedicated ESG reports remained at 85% in 2023 (Millani, *Millani's 8th Annual ESG Disclosure Study: A Canadian Perspective*, October 2024). Furthermore, a 2025 PwC study on 250 top Canadian companies found 67% of companies reference the Task Force on Climate-related Financial Disclosures ("**TCFD**") framework in their disclosure of climate related topics. In this respect, it is

interesting to note that a large proportion of those companies disclose Scope 1 and Scope 2 emissions, with fewer reporting on Scope 3 emissions (PwC, *2025 Canadian Sustainability Reporting Insights*, 2025).

1.4 Are there significant laws or regulations currently in the proposal process?

As noted above, the Canadian Federal Government has recently expanded disclosure on board and executive composition disclosure beyond gender. Further amendments have also been adopted under the CBCA that will require prescribed corporations to develop an approach with respect to the remuneration of the directors and members of senior management, and hold an annual, non-binding vote on such approach (generally referred to as a "say-on-pay" resolution). As is typical for "say-on-pay" votes, the results of the vote are required to be disclosed but are not to be binding on the corporation. Additional amendments will require disclosure of "the recovery of incentive benefits or other benefits", more commonly referred to as clawbacks, on an annual basis. Note that the coming into force of these amendments is tied to the implementation of corresponding regulations. Accordingly, in early 2021, Corporations Canada launched public consultations on proposed regulations under the CBCA related to such recent amendments. The results of the consultations are being analysed and there will be an opportunity for stakeholder comment if regulations are proposed (Corporations Canada, 2024–2026 Forward Regulatory Plan).

While it remains to be seen when the foregoing amendments will take effect, in October 2024, the Canadian Federal Government announced its intention to amend the CBCA to mandate climate-related financial disclosures for large, federally incorporated private companies. The amendment being contemplated purports to support investors' understanding of how large businesses are thinking about and managing risks related to climate change, and ensuring that capital allocation aligns with the realities of a net-zero economy. In the announcement, the Canadian Government indicated that it would launch a regulatory process to determine the substance of the disclosure requirements and the size of private federal corporations subject to them. In any case, small and medium-sized businesses would not be subject to the requirements, but the government remarked that it was considering ways to encourage those businesses to voluntarily release climate disclosures. No specific guidelines have been issued yet to determine what constitutes a "small or medium-sized business".

Consistent with the Ontario Taskforce's recommendation that TSX-listed companies adopt written policies that "expressly addresses the identification of candidates who self-identify as women, black, indigenous and people of colour ("**BIPOC**"), persons with disabilities or those within the LGBTQ+ community during the nomination process", the CSA proposed amendments in 2023 to expand the current requirement to focus on diversity beyond gender. This included disclosure on aspects of diversity beyond the representation of women, with the intention to elicit meaningful insight about how non-venture issuers identify and evaluate new candidates for nomination to the board, how they address board renewal, and how diversity is incorporated into those considerations. It is also intended to provide investors with decision-useful information that enables them to better understand how diversity ties into an issuer's strategic decisions and encourages issuers to better articulate their corporate governance practices related to board nominations, board renewal and diversity. Notably, however, members of the CSA have published alternative proposals. One group favours a more flexible approach that allows issuers to determine which "identified groups" are relevant to their operations, accompanied by narrative disclosure on diversity objectives and mechanisms. The other group, led by the Ontario Securities Commission (the "**OSC**"), advocates for disclosure in respect of prescribed "designated groups" and more prescriptive and standardised disclosure imposed on all issuers (*Notice and Request for Comment on amendments to Form 58–101F1 Corporate Governance Disclosure of National Instrument 58–101 Disclosure of Corporate Governance Practices and proposed changes to National Policy 58–201 Corporate Governance Guidelines* pertaining to director nomination process, board renewal and diversity, April 2023). However, whether any of these proposals move forward remains to be seen given the CSA's announcement in April 2025 that is pausing its work on climate-related disclosures and amendments to diversity-related disclosure requirements (CSA, *CSA updates market on approach to climate-related and diversity-related disclosure projects*, April 23, 2025).

Building on these ISSB Standards discussed above, the CSSB released its inaugural Canadian sustainability disclosure standards in December 2024. Using IFRS S1 as a foundation, the CSSB developed the Canadian Sustainability Disclosure Standard 1, *General Requirements for Disclosure of Sustainability-related Financial Information* ("**CSDS 1**"). Similarly, based on IFRS S2, it developed the Canadian Sustainability Disclosure 2, *Climate-related Disclosures* ("**CSDS 2**"), with certain modifications to address Canadian-specific circumstances (collectively, the "**CSSB Standards**").

CSDS 1, like the IFRS S1, requires entities to disclose material information about sustainability-related risks and opportunities that could reasonably be expected to affect cash flows, access to finance, or cost of capital over the short, medium, or long term. It is focused on disclosures useful to primary users of general-purpose financial reports in making decisions related to providing resources to the entity. Information is material if omitting, misstating or obscuring information could reasonably influence the decisions of primary users of general-purpose financial reports, including financial statements and sustainability-related financial disclosures, about a reporting entity.

Similarly, CSDS 2 requires entities to disclose information about its climate-related risks and opportunities that could be reasonably expected to affect the entity's prospects. In line with IFRS S2, climate-related risks in this context includes both physical risks and transition risks.

The CSSB Standards, based on the global baseline standards of the ISSB and modified for the Canadian context, were officially issued on December 18, 2024, and were technically effective for annual reporting periods beginning on or after January 1, 2025.

However, following the publication of the CSSB Standards, the CSA issued a press release on December 18, 2024, noting that the standards are voluntary until mandated by the provincial and territorial regulators. While the CSA has originally stated that its rule would take into account the CSSB Standards and incorporate modifications deemed suitable for the Canadian capital markets, the fate of any such developments remains uncertain given the subsequent announcement that its work was being paused (*CSA issues market update on climate-related disclosure project*, December 18, 2024 and *CSA updates market on approach to climate-related and diversity-related disclosure projects*, April 23, 2025).

Shortly after the new greenwashing provisions came into law on June 20, 2024, the Competition Bureau launched a public consultation about the provisions and invited comments. On June 5, 2025, the Competition Bureau released its guidance for making environmental claims under the *Competition Act*. The guidelines provide the Competition Bureau's interpretation and enforcement approach to greenwashing, including

the evidentiary standards the Competition Bureau would need to meet if it were to challenge an environmental claim under the *Competition Act*. Importantly, the Competition Bureau's guidelines are not binding on private litigants pursuing private actions for greenwashing, but the court may nonetheless take the guidelines into consideration, and the Competition Bureau may follow them when deciding whether to participate in a private case. The expansion of private access rights marks a significant shift in Canada's competition enforcement framework, which has traditionally been enforced solely by the Competition Bureau. With this change, private litigants will be able to initiate legal proceedings by seeking leave from the court, provided it is in the "public interest". The Competition Bureau published an information bulletin on June 20, 2025 – the same day the provision permitting private access rights took effect – explaining its views on private access under the *Competition Act* (Competition Bureau, *Bulletin on Private Access to the Competition Tribunal*, June 2025). The bulletin does not set out how the court should determine whether granting leave to a private litigant is in the "public interest". However, the Competition Bureau's explanation of when it will make written representations to the court on leave applications provides some instructive guidance. This includes considerations such as whether the issues could have significant impact on consumers, the business community or the Canadian economy, and whether important legal issues relevant for other cases could be decided. A public consultation on private access, held from June 20 to August 19, 2025, may result in additional guidance on how the "public interest" threshold should be applied. Overall, the ability for the Competition Bureau to make submissions in response to a leave application or to intervene once leave is granted indicates an intention to play an active role in the new private access regime and the development of case law on environmental claims.

Lastly, in October 2024, the Government of Canada announced its support for the development of voluntary Made-in-Canada sustainable investment guidelines to aid the categorisation of investments based on objective eligibility criteria consistent with the goal of reaching net-zero emissions by 2050 and limit global temperature rise to 1.5°C above pre-industrial levels.

The initial Canadian taxonomy will have a primary focus on the electricity, transportation, buildings, agriculture and forestry, manufacturing, extractives, including mineral extraction and processing, and natural gas industry sectors with secondary and tertiary priority sectors to follow. The taxonomy is expected to include guiding principles, defining green and transition investments, priority sectors, company-level expectations and governance and funding. Once completed, the Canadian taxonomy will not be mandated, but it will be available to financial institutions, lenders, and companies at large to be used on a voluntary basis.

1.5 What significant private sector initiatives relating to ESG are there? To what extent are private companies reporting on ESG issues?

ESG integration into private sector investing decisions continues to evolve. While responsible investing as a component of risk mitigation is not new, there is a growing transition to focus on responsible investing as an integral component of the value generation analysis. This correlates to growing pressure from the private sector for better standardisation and benchmarking of both disclosures and performance. Further, the support for the development of evaluation standards, rating indexes, and research organisations dedicated to evaluating ESG strategies, performance, responsibilities and risks, such as the Carbon Disclosure Project ("**CDP**"), the Global Reporting Initiative ("**GRI**"), the Dow Jones Sustainability Index, the Institutional Shareholder Services ("**ISS**") ESG, the Morgan Stanley Capital International ("**MSCI**") ESG Index, and Sustainalytics began to develop. This also correlated to proxy advisory firms, including the ISS and Glass Lewis, placing a heightened emphasis on ESG factors for the upcoming proxy seasons. The publication of the two inaugural standards published by the ISSB regarding sustainability and climate-related disclosure is a notable development in this respect for issuers as the standards are meant to provide a global reporting framework that seeks to meet investors' and market participants' expectations. In December 2024, 10 of Canada's largest pension investors and investment managers affirmed their support for the CSSB Standards, noting that alignment with a global baseline is important for the competitiveness of Canadian companies in global capital markets (*Leading Canadian Pension Plan Investment Managers Support CSSB Standards*, December 18, 2024). In 2025, Canadian investors continue to call for alignment with these global benchmarks (Millani, *Semi-Annual ESG Sentiment Study of Canadian Institutional Investors*, February 12, 2025).

Although there has been encouraging momentum in ESG integration across the private sector, there are also signs of retrenchment. For example, in April 2025, a major Canadian financial institution announced a retraction in its previously stated sustainable financing target of CA$500 billion by 2025, originally set in 2021, citing the recent changes to the *Competition Act* related to greenwashing provisions as the reason for this decision. In addition, the institution also disclosed that it is currently unable to provide disclosures such as its energy supply ratio, which compares financing for low carbon versus high carbon energy, or report on its progress toward low carbon energy lending goals, due to these regulatory concerns arising out of these changes (ESG Today, *RBC Drops $500 Billion Sustainable Finance Target*, April 30, 2025).

2 Principal Sources of ESG Pressure

2.1 What are the views and perspectives of investors and asset managers toward ESG, and how do they exert influence in support (or in opposition) of those views?

Asset managers across several sectors are focused on the ESG performance, rating and/or evaluation of issuers, with many having specific requirements with respect to expectations or ratings, particularly regarding environmental stewardship and management, and thus require reports or disclosure responsive to these concerns in order to inform their investment decisions. However, there are a range of approaches taken to apply their principles to investing decisions, which may include the implementation of screens or exclusions through the restriction of investments in certain sectors (such as tobacco or weapons manufacturing), to full ESG integration into investment analysis. As the correlation between ESG and value-generation becomes increasingly recognised, the implementation of full ESG integration becomes more widely accepted. Interestingly, the ESG pushback in the U.S. has not translated materially into changes in Canadian institutional investors' investment approach, with 93% of 27 asset owners and managers, representing CA$4.3 trillion in assets under management, surveyed by Millani staying the course (Millani, *Semi-Annual ESG Sentiment Study of Canadian Institutional Investors*, February 12, 2025). Although 93% of investors see the outcome of the U.S. election as a major source of expected market volatility, particularly in respect of sustainability policies, tariffs and

international relations, they remain committed to continuing ESG integration (Millani, *Semi-Annual ESG Sentiment Study of Canadian Institutional Investors*, February 12, 2025). Asset managers also exert influence through direct and indirect engagement, including through the implementation of proxy voting policies and policy-based voting; as a result, Canadian institutional investors have generally reviewed their voting and engagement policies to increase the focus on ESG risks.

The Canada Pension Plan Investment Board and Public Sector Pension ("**PSP**") Investments are among some of the global leaders participating in the ESG Data Convergence Initiative with the aim of advancing an initial standardised set of ESG metrics and a mechanism for comparative reporting. Initiated by the California Public Employees' Retirement System and the global investment firm Carlyle, the collaboration efforts of the ESG Data Convergence Initiative are intended to consolidate and streamline the private equity industry's approach to collecting and reporting ESG data to create a critical mass of material, performance-based, comparable ESG data from portfolio companies. A primary goal of the initiative is to provide opportunities for deeper analysis and correlative studies between ESG factors and financial outcomes, in the hopes of ultimately resulting in more meaningful benchmarking and highlighting the more critical ESG issues with the potential for greater impact. The ESG Data Convergence Initiative examines the following initial six metrics: Scopes 1 and 2 greenhouse gas emissions; renewable energy; board diversity; work-related accidents; net new hires; and employee engagement. The ESG Data Convergence Initiative surpassing 500 committed general partners ("**GPs**") and limited partners ("**LPs**") globally underscores the ongoing dedication to advancing meaningful ESG metrics in private markets (ESG Data Convergence Initiative, *EDCI Newsletter: The EDCI grows to over 500 members*, May 19, 2025).

2.2 What are the views of other stakeholders toward ESG, and how do they exert influence in support (or in opposition) of those views?

Stakeholder views on responsible investment and ESG remain strong, with a growing focus on biodiversity and greenwashing. In a 2025 survey conducted by the Responsible Investment Association ("**RIA**"), 67% of respondents were interested in responsible investment, although indicating a slight decline in interest since 2021 when 73% indicated an interest (RIA, *2025 RIA Investor Opinion Survey – Canadian Investor Perspectives on Responsible Investing,* 2025). Biodiversity is gaining prominence among Canadian investors, ranking as the second most important ESG issue after climate, among those representing CA$4.35 trillion in assets under management (Millani, *Semi-Annual ESG Sentiment Study of Canadian Institutional Investors Canadian Institutional Investors*, February 12, 2025). An increasing number of investors, now at 15%, are placing greater emphasis on the connection between climate and biodiversity, recognising nature as a potential solution to climate-related challenges (Millani, *Semi-Annual ESG Sentiment Study of Canadian Institutional Investors Canadian Institutional Investors*, February 12, 2025). The Kunming-Montreal Global Biodiversity Framework provides support for this trend, aided by the Taskforce on Nature-related Financial Disclosures ("**TNFD**") guidance. Issuers are paying heed to investors' interest regarding biodiversity with 55% of reports by S&P/TSX Composite Index constituents including relevant metrics on this topic (Millani, *Millani's 8th Annual ESG Disclosure Study: A Canadian Perspective,* October 2024).

Investors' concerns about biodiversity loss are also accompanied by widespread concerns about greenwashing, which presents challenges for individual investors, their advisors and fund manufacturers. In 2025, 54% of respondents surveyed by RIA agreed that greenwashing discourages them from responsible investing, up from 46% in 2024 (RIA, *2025 RIA Investor Opinion Survey – Canadian Investor Perspectives on Responsible Investing,* 2025).

Sustainability-related shareholder proposals filed outside the U.S. continued to increase, with 114 resolutions in 2024 and 147 in 2025, including 108 targeting Canadian-headquartered companies. Proposals from anti-ESG proponents continue to receive minimal support, averaging just 2.5% in 2025 compared to 2.4% in 2024 (Principles for Responsible Investing, *Proxy season by the numbers: What 2025 filings tell us about investor priorities*, August 28, 2025).

2.3 What are the principal regulators with respect to ESG issues, and what issues are being pressed by those regulators?

Leaving aside the Competition Bureau, which has the power to review, investigate and enforce environmental claims, the principal regulators of ESG issues are the CSA, the TSX, and the Canadian Federal Government through amendments to the CBCA. The Office of the Superintendent of Financial Institutions ("**OSFI**") also acts as regulator for federally regulated financial institutions ("**FRFIs**"). These regulators are focused on proper governance and stewardship, board and executive gender diversity with a shift towards diversity more generally, and E&S issues, including environmental and climate change-related risks, risk management and disclosure.

In March 2024, the CSA published a revised version of *Staff Notice 81–334 ESG-Related Investment Fund Disclosure* (the "**Staff Notice 81–334**"), initially published in 2022, which seeks to clarify and explain how existing regulatory requirements apply to ESG-related fund disclosure, without creating any new obligations. Specifically, the Staff Notice 81–334 provides guidance on how existing disclosure regulations apply to ESG-related funds, including in respect of the following:

- **Investment objectives and fund names**. According to the Staff Notice 81–334, to prevent greenwashing, the fund's name and description of its investment objectives should "accurately reflect the extent to which the fund is focused on ESG".
- **Fund types**. The CSA note that while not required, a fund may want to, where relevant, identify itself as a fund that focuses on ESG in addition to its primary fund type (i.e., an ESG Canadian equity fund, ESG global equity fund, etc.).
- **Disclosure of investment strategies**. The requirement that a fund's prospectus disclose its investment objectives and processes applies to ESG-related objectives and strategies. As such, a fund is required to provide adequate disclosure about the ESG-related aspects of its investment strategies and selection process.
- **Proxy voting and shareholder engagement**. Where a fund uses proxy voting as an ESG investment strategy, it must include a summary of the ESG aspects of the proxy voting policies and procedures. While funds are not required to disclose their shareholder engagement policies, the Staff Notice 81–334 encourages funds to provide transparency with regard to the scope and nature of shareholder engagement as an ESG strategy.
- **Risk disclosure**. Funds should consider whether there are material risks associated with its ESG strategies and disclose where applicable. Such ESG-related risks may

include concentration risk and the risk of underperformance due to the fund's ESG focus or reliance on third-party ESG ratings.

- **Suitability**. According to the CSA, a fund's suitability statement should "accurately reflect the extent of the fund's focus on ESG" and, where applicable, the specific aspects of ESG on which the fund focuses. Where appropriate, the suitability statement may state that the fund is suitable for ESG-focused investors, provided such statement accurately reflects the ESG aspects of that fund.
- **Continuous disclosure**. A fund's annual and interim management reports of fund performance must, among other things, disclose how the fund's portfolio composition, and changes to composition, relate to the fund's ESG-related investment strategies and objectives. Further, as funds with ESG-related objectives will also aim for ESG-related outcomes, the Staff Notice 81–334 encourages funds to disclose performance indicators towards achieving these outcomes.
- **Sales communications**. CSA staff consider sales communications that fail to accurately reflect the extent to which a fund is focused on ESG, as well as the particular ESG aspect(s) the fund focuses on, to be misleading. According to the Staff Notice 81–334, examples of misleading disclosure may include suggesting that a fund is focused on ESG when it is not, misrepresenting the extent and nature of the fund's use of ESG strategies, and making inaccurate claims about the fund's ESG performance or results. Further, guidance is provided related to accurately providing fund-level ESG ratings, scores or rankings.
- **ESG-related terminology**. Funds using ESG-related terms that are not commonly understood should clearly explain the terms in plain language.

Since the publication of the Staff Notice 81–334, there has been a significant increase in the number of investment fund managers ("**IFMs**") that include disclosure about ESG factors and strategies in the prospectuses of their funds. However, for many of these funds, the consideration of ESG factors plays only a limited role in the fund's investment process with some only considering ESG factors as one of the many inputs in their risk management process. The revised CSA Staff Notice provides guidance with respect to those limited consideration funds, in particular regarding the disclosure in the prospectus of the limited role that the consideration of ESG factors and/or use of ESG strategies plays in the fund's investment process.

The Guideline B-15: *Climate Risk Management* sets out OSFI's expectations for the management of climate-related risks for FRFIs, and is OSFI's first prudential framework that is climate sensitive and recognises the impact of climate change on managing risk in Canada's financial system. In March 2024, OSFI updated Guideline B-15 to align with IFRS S2, incorporating several of IFRS S2's key elements with respect to reporting on governance, strategy, risk management, and metrics and targets. OSFI published an updated version of Guideline B-15 on March 7, 2025, which primarily aligned OSFI's climate disclosure requirements with the new CSSB Standards and deferred Scope 3 emissions reporting to a phased timeline beginning in 2028 (OSFI, Guideline B-15: *Climate Risk Management*, March 7, 2025). OSFI also introduced Climate Risk Returns that will collect standardised climate-related data on emissions and exposures from FRFIs. This return was first effective for the fiscal year-end 2024 for domestic systemically important banks and internationally active insurance groups headquartered in Canada, and for all other in-scope FRFIs, it will take effect at fiscal year-end 2025.

2.4 Have there been material enforcement actions with respect to ESG issues?

Reporting issuers are subject to specific requirements relating to disclosure of material information as discussed above, including timely disclosure of material changes. In addition to exposure to sanctions and regulatory enforcement for failing to comply with these disclosure obligations and any potential enforcement actions from the Competition Bureau, issuers also risk secondary market liability for actions relating to misrepresentations and failure to make timely disclosure. With respect to ESG matters, particular areas of risk include inadequate assessment and/or disclosure of the impact of ESG factors on operations, particularly in respect of environmental and climate change-related liabilities, including changes to applicable regulations. As part of the preparation of the Staff Notice 81–334 discussed above, the CSA conducted a review of 32 funds managed by 23 fund managers. The review identified a number of issues regarding the disclosure of investment strategy, proxy voting strategy and changes to portfolio composition. Those findings led the CSA to conclude that clarification was needed on how existing disclosure requirements apply to ESG-related funds in order to reduce the potential for greenwashing, whereby a fund's disclosure or marketing intentionally or inadvertently misleads investors about the ESG-related aspects of the fund. Consequently, the CSA updated the Staff Notice 81–334, as noted above, to clarify and explain how existing regulatory requirements apply to ESG-related fund disclosure.

Following on the heels of this staff guidance, the OSC initiated an enforcement action against a fund manager in 2025, underscoring the growing regulatory scrutiny on ESG-related claims and signals that greenwashing allegations are no longer confined to theoretical risk but are becoming a tangible reality for market participants. The enforcement action launched against the fund manager and its founder allege overstatements on how much the fund manager integrates ESG factors into investment decisions. The OSC claims that fund marketing and public statements portrayed a deeper reliance on ESG than what was in fact applied internally, and that fund disclosures in regulatory filings were inconsistent with how ESG was in fact factored in (OSC, *Ontario Securities Commission and Purpose Investment Inc. and Som SEIF*, September 12, 2025).

On August 20, 2025, Investors for Paris Compliance filed a complaint with the Alberta Securities Commission (the "**ASC**") against certain oil and gas companies, alleging misleading net-zero disclosures. While securities law in Alberta does not specifically target greenwashing, it prohibits false or misleading statements that could affect the market value of securities, which may apply to environmental claims made by public companies. The ASC has yet to confirm whether it will investigate, but the complaint underscores the potential for securities law to serve as another avenue for addressing misleading environmental claims (Investors for Paris Compliance, *Our Complaint to the Alberta Securities Regulator*, August 20, 2025). Investors for Paris Compliance indicated it may pursue its greenwashing complaint under the *Competition Act*, viewing the securities complaint with the ASC as the first step.

2.5 What are the principal ESG-related litigation risks, and has there been material litigation with respect to ESG issues, other than enforcement actions?

As ESG related legislation, market trends and industry standards continue to evolve, companies remain under pressure to develop, report and respond to the developing requirements

and industry pressures; with the accumulation of data through annual ESG reporting, stakeholders are better positioned to assess corporate accountability and performance metrics overall. Accordingly, companies must safeguard against overstatement and misstatement of ESG performance, as such practices run the risk of potential and significant financial and reputational harm, civil litigation, and in more extreme cases, criminal sanctions.

The Ontario Court of Appeal's decision in *Drywall Acoustic Lathing and Insulation, Local 675 Pension Fund v. Barrick Gold Corporation*, 2021 ONCA 104 ("***Barrick***") is a notable illustration of class action litigation risk. In *Barrick*, a class action was filed against the corporation by the plaintiff group claiming that the corporation failed to disclose material facts in respect of serious environmental non-compliance during the lifespan of the gold mining project; while both the motion judge and the Court of Appeal found that plaintiffs had failed to establish environmental misrepresentations by omission, these allegations have led to careful judicial consideration of the context in which the disclosures were made. *Barrick* was recently affirmed in *Terry Longair Professional Corporation v. Akumin Inc.*, 2025 ONCA 606 ("***Terry***"). In *Terry*, the respondent sought to certify a class action against Akumin and its officers and directors for primary and secondary market liability under the Securities Act, in relation to an alleged misrepresentation that prejudiced investors. The Court in *Terry* referred to *Barrick* as the leading authority for characterising disclosure that qualify as a "public correction", which plays a key role in defining the class of putative plaintiffs, identifying the end of the class period, and calculating damages. Here, the Court in *Terry* reiterated the importance of taking a contextual approach when assessing misrepresentations arising from incompleteness of disclosure.

In Canada, climate change-related litigation involving tort claims against corporations with added pressures exerted by the Crown, municipalities, Indigenous Peoples, private citizens and environmental non-governmental organisations appear to be the most prominent. In the *Thomas and Saik'uz v. Rio Tinto Alcan Inc.* decision released in January 2022, the British Columbia Supreme Court confirmed that third-party proponents can be held liable for torts affecting a First Nations' established or claimed Aboriginal rights and title if these entities exceed the bounds of its regulated authority. Saik'uz First Nation and Stellat'en First Nation claimed nuisance and breach of riparian rights against Rio Tinto for the diversion of water from the Nechako watershed resulting in depleted natural fish stock and therefore an impairment of their Aboriginal right to fish for food and for use for social and ceremonial purposes. However, Rio Tinto successfully argued that such statutory authorisation was constitutionally valid and permitted them to commit the nuisance, and that they were not responsible for British Columbia authorising the construction and operation of the dam despite knowing it would affect fish population in the Nechako watershed.

As seen in the Supreme Court of Canada's decision in *Nevsun Resources Ltd v. Araya* in early 2020, social factors within ESG also present litigation risk for corporations. In *Nevsun*, Eritrean plaintiffs alleged that the Canadian mining company violated customary international law by allowing human rights abuses in the partly-owned Bisha mine (*Nevsun Resources Ltd v. Araya*, 2020 SCC 5). The majority decision to allow the plaintiffs to bring their claim in Canada represents a progression in Canadian judicial thinking on the responsibilities and legal accountability of corporations operating abroad where human rights abuses may occur. ESG disclosure and compliance with ESG metrics is gaining importance as corporate liability is expanding.

Additionally, as discussed above, the recently adopted OSFI Guideline B-15 also places federally regulated banks and insurers at an increased risk of litigation relating to misrepresentation of claims, deceptive trade practices and securities fraud.

Environmental activist groups are also actively monitoring corporate ESG claims as statements are being delivered into the market. In November 2021, Greenpeace Canada filed a complaint with the Competition Bureau alleging that Shell's "Drive Carbon Neutral" claims were misleading under the *Competition Act*, citing unsubstantiated "carbon neutral" claims and disputing the validity of its carbon offsets. Shell subsequently removed its advertising from Canadian platforms, and in response, the Competition Bureau closed its investigation into Shell in December 2023.

In March 2023, Greenpeace Canada filed a complaint against the Pathways Alliance's "Let's Clear the Air" campaign, stating that its net-zero plan overlooks 80% of emissions, ignores fossil fuel expansion, relies on speculative carbon capture technology, and falsely portrays Pathways Alliance as a climate leader, despite members opposing climate action. The status of the Pathways Alliance inquiry by the Competition Bureau appears to have been closed, with Pathways Alliance removing most of its public representations once the *Competition Act*'s greenwashing provisions became law.

In February 2024, the Competition Bureau confirmed an investigation into Lululemon after a complaint from Stand Environmental Society. The complaint alleges that Lululemon's "Be Planet" campaign, which promoted its use of recycled fabrics and pledged to reduce greenhouse gas emissions, was misleading due to findings in its own 2022 Impact Report showing a doubling of Scope 3 emissions since 2020.

These complaints were initiated through a six-resident complaint application to the Competition Bureau, a popular enforcement tool available under the *Competition Act*. A six-resident complaint compels the Competition Bureau to investigate the reviewable conduct in response to the complaint and, if appropriate, take legal action for deceptive marketing practices.

At the Competition and Green Growth Summit in September 2022, the Commissioner of Competition emphasised that the Competition Bureau would continue enforcement within the existing legal framework of the *Competition Act*, with no intention to expand the objectives of competition law and policy. Businesses were also advised to ensure that their ESG reports comply with the deceptive marketing provisions of the *Competition Act*, even though enforcement in this area has not historically been a focus for the Bureau. The Competition Bureau clarified in its most recent guidance on environmental claims that it is not concerned with publicly traded companies providing voluntary and mandatory information to current and potential investors that includes environmental claims, as such disclosures fall under securities regulation. If those same environmental claims are reused by the company to promote a product or business interest outside of the sale of securities, then the *Competition Act* will apply (Competition Bureau, *Environmental claims and the Competition Act*, June 2025).

This is noteworthy because ESG reports and other materials containing ESG-related claims that are available to the general public face heightened litigation and reputational risks – not only from the Competition Bureau, but also (more likely) from the newly expanded private access rights that came into force on June 20, 2025. This enhanced access offers consumers, competitors, non-governmental organisations, and other stakeholders an additional avenue to challenge ESG-related claims. Under the *Competition Act*, misrepresentations under the deceptive marketing provisions are treated as strict liability offences, and businesses can be liable for paying an administrative monetary penalty of up to 3% of their worldwide gross revenues

even if no one suffered any harm or was misled. However, the Competition Bureau confirmed in its guidance that a due diligence defence is available under the *Competition Act* for environmental claims. A business that can demonstrate it exercised due diligence to prevent deceptive marketing practices may be ordered to stop those practices but cannot be ordered to pay an administrative monetary penalty or restitution (Competition Bureau, *Environmental claims and the Competition Act*, June 2025).

The principal ESG-related risks for businesses moving forward are consistent with the common types of six-resident complaints made to the Competition Bureau. These include forward-looking or aspirational statements about climate commitments that have not been independently verified, as well as claims about carbon neutrality, net-zero emissions, and emissions reductions that depend on offsets. Despite the new greenwashing provisions and the expansion of private rights to challenge deceptive marketing practices, there has been no material litigation activity under the *Competition Act*.

Following corporate settlements with the Competition Bureau for deceptive marketing practices, there appears to be a trend of class action suits that arise. For instance, following Keurig's settlement with the Competition Bureau relating to alleged false or misleading environmental consumer claims regarding the recyclability of its single-use Keurig® K-Cup® pods in 2022, three separate class action claims were filed in Ontario, British Columbia and the Federal Court for alleged misleading or deceptive marketing practices relating to the K-Cup coffee pods. Proceedings are currently ongoing.

The intersection of consumer protection and competition law remains to be another source of litigation risk for companies with respect to environmental claims. In Quebec, a number of class actions have been filed in the past two years targeting businesses regarding claims such as bag recyclability, compostable bags and forest-friendly toilet paper. In March 2024, a notice of civil claim was filed in the Supreme Court of British Columbia against FortisBC Energy Inc., FortisBC Holdings Inc., and Fortis Inc., alleging that the companies engaged in greenwashing by misrepresenting their natural gas supply practices and its connection with renewable sources. For now, no lawsuits have targeted directors or officers with respect to false or misleading ESG-related representations.

Criminal sanctions for ESG misdemeanours remain uncommon; however, in 2023, Amberg Corp., an environmental and regulatory consulting company registered in Alberta, along with its senior environmental regulatory coordinator, were found guilty by the Alberta Court of Justice, Criminal Division, and were charged with 25 counts of false and misleading information, providing functions of a third-party assurance provider without the required qualifications, and failing to comply with the rules and requirements set out in the *Standard for Validation, Verification and Audit* under the provincial *Emissions Management and Climate Resilience Act*. The coordinator pled guilty to one count of knowingly providing false and misleading information pursuant to a requirement under the legislation, and was sentenced to pay a CA$10,000 fine, prohibited from engaging in any employment that may involve collecting, analysing, reporting, validating, verifying or auditing environmental data for a period of three years, and ordered to prepare an article for publication informing the public of the legal consequences of failing to comply with the law. Charges against Amberg Corp. were ultimately withdrawn, but the proposed penalties associated with the charges were significant and included possible penalties of up to CA$500,000 for 24 of the 25 charges and one penalty of up to CA$1 million.

2.6 What are current key issues of concern for the proponents of ESG?

The CSSB release of the CSDS 1 and CSDS 2 in December 2024 provides proponents with a more jurisdictional-focused set of methodologies and frameworks better aligned with the ISSB Standards; although the CSDS 1 and CSDS 2 remain as voluntary guidelines rather than mandated requirements, the development advances a more standardised approach for proponents. Additionally, ESG analysis rather than ESG investing continues to be the focus for evaluators, with the former incorporating measurable and consistent ESG-based criteria in the core investment analysis as opposed to the use of ambiguous criteria resulting in only perceived rather than actual value.

Within the theme of enhanced ESG analysis, double materiality assessments continue to be utilised in Canada with a two-fold analysis incorporating measures of financial materiality and impact materiality. The metrics encompass a more holistic and bi-directional analysis of an operation's activities, assessing financial metrics inwardly and E&S impact outwardly with the goal of fostering a cycle of corporate sustainability.

With the recent political scrutiny for the emphasis of diversity in corporate governance, major U.S. corporations have scaled back references to equity, diversity and inclusion ("**EDI**") initiatives at-large and U.S. investor sentiment has also shifted. Reports show that the support of EDI-related shareholder proposals has decreased from 19% in 2023 to 13% in 2024, and has been counterbalanced with a rise in support for anti-EDI proposals. In January 2025, BlackRock and Vanguard updated their proxy voting guidelines to remove references to previous diversity targets and softened their stance on board diversity. However, market reactions suggest that U.S. investors have not fully abandoned EDI principles (Millani, *Navigating the Evolving DEI Landscape: Implications for Canadian Organizations*, February 26, 2025). With U.S. EDI policies facing increased resistance, Canadian companies may need to consider and anticipate potential shifts in investor expectations and adapt to evolving regulatory pressures.

Environmental issues continue to lead the ESG conversation in Canada in comparison to social factors and corporate governance issues. However, the recognition of Indigenous rights and action towards reconciliation and economic development continues to be a top priority in Canada. As well, with the enactment of the *Modern Slavery Act*, Canadian companies are now prompted to review their supply chain lines with more scrutiny to identify and mitigate potential vulnerabilities where forced labour and/or child labour risks could be more prevalent in their supply chains.

A recent survey of prominent asset owners and managers reveals that biodiversity is cited as the third most important ESG topic by investors after climate, human capital and human rights (including Indigenous rights and reconciliation), ahead of EDI (Millani, *Semi-Annual ESG Sentiment Study of Canadian Institutional Investors*, September 2024). Proponents of ESG are also continuing to press for incentive-based compensation structures that reward executives for incorporating and achieving ESG metrics with a focus on health and safety measures. Large-cap issuers are increasingly paying heed to these demands, with four in five TSX 60 companies having formally incorporated at least one ESG metric in compensation plans or disclosed according to a 2024 global study by WTW.

Cybersecurity risk, including data security, is another top-ranked ESG concern for institutional investors. As the cyberattacks that have roiled large corporations in recent years have shown, malicious cyber activity can inflict serious financial, operational and reputational harm on firms, engaging

a new level of corporate governance and social risk review. Following the global COVID-19 pandemic, the remote-working environment is now a subsisting byproduct, which requires companies to allocate resources to accommodate for increased cybersecurity risk as the hybrid work structure with remote work options continues to create new avenues for unauthorised access to company data and information technology systems by hackers and cyber criminals. In the U.S., the Securities and Exchange Commission (the "**SEC**") recently adopted new rules requiring the disclosure of cybersecurity risk management, strategy, governance, and material incidents. Effective September 5, 2023, the rules apply to U.S. domestic companies and foreign private issuers ("**FPIs**"). FPIs, including those eligible for the U.S.-Canada Multijurisdictional Disclosure System ("**MJDS**"), must furnish, on Form 6-K, information on material cybersecurity incidents that are disclosed in a foreign jurisdiction to any stock exchange or security holder. The rules also require enhanced disclosure of a company's cybersecurity risk management and governance in annual reports on Form 20-F. Canadian issuers eligible to use MJDS are permitted to use Canadian disclosure standards and documents to satisfy the SEC's registration and disclosure requirements. Against this backdrop, it is likely that the application of the new SEC rules will provide guidance to Canadian issuers regarding their cybersecurity disclosure.

In 2025, Environment and Climate Change Canada implemented the Federal Plastics Registry under the *Canadian Environmental Protection Act, 1999* (the "**CEPA**"), introducing mandatory reporting obligations for organisations across the plastics value chain. These requirements compel resin manufacturers, producers of plastic products, and waste management service providers to disclose detailed data on plastic manufactured, imported, placed on the market, and managed at end of life. Reporting must include the category and subcategory of packaging or plastic products, the resin type, the resin source, and the quantities of packaging or plastic products, and the methods for calculating each of the values reported. This regulation expressly targets major contributors to plastic waste, such that small producers and importers, small waste generators, and small waste managers are exempt from this regulation. The phased implementation begins in 2025 and expands through 2027, with legal enforcement provisions under sections 272 and 273 of the CEPA imposing penalties against organisations that meet reporting thresholds, but which fail to report, do not report on time, or knowingly submit false or misleading information, constituting non-compliance or misrepresentation.

2.7 Have ESG issues attracted shareholder activism, and from whom?

Shareholder activism in Canada continued to evolve throughout the 2025 proxy season, marked by a shift in both focus and volume. The number of proposals submitted to TSX 60 companies fell by nearly 30% compared to the same period in 2024 (KnowESG, *Proxy Season 2025 Highlights: What Shareholders Are Demanding Now*, July 3, 2025). Although ESG proposals had dominated in previous years, their momentum slowed down in 2025. Nonetheless, climate risk management remained a key concern among investors. Diversity-related proposals were notably scarce, with only one calling for a racial equity audit. Executive compensation also drew attention, as shareholders sought greater transparency around pay ratios and internal metrics, though overall support for these proposals remained limited.

3 Integration of ESG into Strategy, Business Operations and Planning

3.1 Who has principal responsibility for addressing ESG issues? What is the role of the management body in setting and changing the strategy of the corporate entity with respect to these issues?

Generally, ESG strategy is directed by senior management, with relevant responsibilities divided among applicable business units or functions that are accountable and report to the board. Increasingly, there is integration across particular E&S-related factors, given the growth in the trend towards companies providing consolidated external reports and disclosures, coupled with a shift towards a top-down approach as boards and board committees continue to expand on their direct oversight of E&S-related performance. There is, however, no "one-size-fits-all" approach for allocating ESG oversight responsibilities among the board and its committees and the delegation of responsibilities may change over time. Board oversight of ESG issues can reside with the full board, an existing board committee (i.e., audit committee), or a newly formed, dedicated ESG committee. It can also be shared by the full board and one or more committees or by multiple committees covering ESG issues that fall within their charter mandates and/or policies. Companies may also use a combination of these approaches. Moreover, as many companies move to adopt a more holistic approach to integrating ESG metrics into their corporate frameworks, it is more common to see the addition of a Chief Sustainability Officer to the executive teams as the need for collaborative oversight across business units increases. Ultimately, it depends on the size, industry and culture of the organisation. Current as of 2025, Glass Lewis expects boards to also demonstrate oversight of emerging technology risks, including artificial intelligence ("**AI**"), by adopting internal frameworks, ensuring director education, or appointing members with relevant expertise, and providing clear disclosure of these efforts.

As we see investors push for greater ESG disclosure, proxy advisor firms have also made changes to their guidelines that influence how management, boards and board committees make decisions. Current as of 2025, Glass Lewis has indicated that if there is evidence suggesting that environmental and/or social issues have been improperly managed or mitigated, it may recommend that shareholders vote against the members of the board who are responsible for oversight of environmental and/or social issues. In addition, current as of 2025, for companies in the S&P/TSX Composite Index, Glass Lewis will recommend voting against the governance committee chair unless the company has provided explicit disclosure outlining the board's role in overseeing E&S issues. Glass Lewis' policy related to climate risk also requires that companies, particularly those whose financial position may be impacted by greenhouse gas emissions, disclose how they are mitigating and overseeing climate risk. Glass Lewis may recommend voting against board members responsible for overseeing climate-related matters in the case of failure to provide explicit disclosure relating to climate-related issues as recommended by the TCFD and/or concerning the board's role in overseeing E&S matters (Glass Lewis 2025 Policy Guidelines). In 2025, Glass Lewis expanded its focus beyond climate oversight to include AI governance, shareholder meeting format, and disclosure of board skills. It clarified that companies should engage shareholders when determining meeting formats and provide rationale where in-person attendance is restricted. Glass Lewis also recommends substantive

disclosure of directors' professional experience and may recommend against the nominating committee chair where disclosure is insufficient.

Regarding E&S issues, ISS has adopted a global approach and will generally vote on a case-by-case basis, primarily examining whether implementation of the proposal is likely to enhance or protect shareholder value. The ISS considers in its vote recommendations, among other things, the existence of significant controversies, fines, penalties, or litigation associated with the company's practices relating to environmental or social issues raised in a company's proposal. With respect to companies that are significant greenhouse gas emitters, through their operations or value chain, ISS will generally recommend voting against, or withhold from, the incumbent chair of the responsible committee, in cases where it determines that the company is not taking the minimum steps needed to understand, assess, and mitigate risks related to climate change to the company and the larger economy. With respect to management or shareholder-sponsored say on climate proposals, ISS takes a case-by-case approach taking into account factors such as the completeness and rigor of the plan. Effective for meetings on or after February 1, 2025 and subject to certain exceptions, for companies in the S&P/TSX Composite Index, ISS will generally vote against, or withhold from, the chair of the nominating committee, or chair of the committee designated with the responsibility of a nominating committee, or the chair of the board of directors, if no nominating committee has been identified or no chair of such committee has been identified, where the board has no apparent racially or ethnically diverse members (ISS, *Canada, Proxy Voting Guidelines for TSX-Listed Companies Benchmark Policy Recommendations*, January 2025; and ISS, *Canada, Proxy Voting Guidelines for Venture-Listed Companies Benchmark Policy Recommendations*, January 2025).

3.2 What governance mechanisms are in place to supervise management of ESG issues? What is the role of the board and board committees vis-à-vis management?

Board and board committee oversight of ESG strategies is important to ensure that the relevant ESG policies and practices are being incorporated and evaluated to align with the company's broader corporate strategy, while mitigating risk and capitalising on opportunities. As mentioned previously, oversight may be achieved through an already existing board committee, while certain organisations elect to form specific ESG-focused committees, including those with mandates focused on matters such as risk management, safety and sustainability, human resources, etc. Stikeman Elliott's internal 2024 study found that 21 of the S&P/TSX 60 issuers have "specialised" committees related to corporate social responsibility and health, safety and environment. As stakeholders delve deeper and demand more transparency into the oversight and management of ESG issues, boards and senior management are better positioned to articulate the rationale behind how ESG is incorporated into their reporting frameworks, how ESG is integrated into the development of corporate policy and evaluation of performance metrics, and how ESG reporting metrics influence the evolution of a company's corporate strategy.

Generally, a board and its committees are responsible for setting and developing a company's overall ESG strategies, whereas senior management is responsible for overseeing the implementation and reporting of the company's ESG strategy. From the board's perspective, holistic ESG integration starts with setting the corporate culture and then integrating key matters through risk management, corporate strategy, evaluation and compensation and disclosure. Implementation of a robust enterprise risk management framework is often the key component, with governance, accountability and ultimate oversight by senior management and the board.

3.3 What compensation or remuneration approaches are used to align incentives with respect to ESG?

The most common approach to compensation and remuneration is the integration of ESG-related targets and metrics into incentive-based compensation. Between 2023 and 2024, the prevalence of ESG metrics in short-term incentive plans ("**STIPs**") among TSX 60 early filers rose from 67% to 73%. Adoption of long-term incentive plans ("**LTIPs**") remained limited, increasing from 26% to 29%. For both STIPs and LTIPs, environmental measures are the most common ESG metric. Average weightings for ESG components have held steady, increasing slightly from 24% to 26% (Mercer, *ESG metric adoption continues steady growth while diversity targets decline*, 2025). However, in 2025, there seems to be a decline in the number of TSX 60 early filers that have adopted EDI targets to both executive team diversity and board diversity (Mercer, *ESG metric adoption continues steady growth while diversity targets decline*, 2025). While these are more commonly included under qualitative assessment components, there is an increasing trend towards assignment of quantitative weightings; however, the challenges with this approach include selecting components with a direct correlation to desired outcomes (i.e., business strategy, risk mitigation, etc.), ability for a meaningful individual impact, accuracy and measurement, external comparability, consistency and independent verification.

More generally, common ESG metrics include occupational health and safety practices and outcomes, environment and sustainability goals, and diversity and inclusion factors in workforce composition and human capital and employee engagement. A significant number of Canadian companies listed on the S&P/TSX Composite Index link ESG performance to executive compensation in some manner. In general, the three main ESG themes identified in compensation plans across sectors are: (1) climate change; (2) diversity; and (3) equity and inclusion. When incorporating ESG metrics into executive compensation, companies should ensure there is a clear, measurable link between pay and progress on strategic ESG objectives, rewarding actions that deliver meaningful, financially relevant outcomes rather than symbolic commitments. Key considerations include the relevance and financial materiality of the ESG metric, the consequent uplift in the company's performance, the extent of existing disclosures, and the credibility of plans addressing the underlying ESG issues.

Approaches with respect to integration also continue to evolve and include increased weighting, application of ESG modifiers and incorporation into long-term incentives. It is recognised that pairing executive compensation and remuneration incentives with long-term strategic plans including ESG strategies may contribute to the positive delivery of sustained shareholder value creation. However, it is critical for boards to discuss and monitor the selection, design and verification of comprehensive metrics, goals and related achievements associated with executive compensation consistently, and because ESG reporting and evaluation metrics are not standardised, boards should consider engaging independent third-party ESG experts to assist with verifying ESG data and predetermined metrics to inform board members about company and executive performance. Boards should also consider which ESG factors are most relevant to

their business and which factors will materially impact financial and operational performance and create long-term sustainable value. Further consideration should be given to an organisation's stakeholder base, as different stakeholders have called for the use of different reporting frameworks.

3.4 What are some common examples of how companies have integrated ESG into their day-to-day operations?

Companies use a variety of mechanisms to integrate ESG into their day-to-day operations. These include specific ESG-related policies and requirements, including the incorporation of ESG-related targets and goals into procurement activities, implementation of higher reporting standards for suppliers to increase visibility and supply chain traceability, thoughtful recruiting and hiring practices, increasing health and safety reporting practices and incorporating employee feedback to enhance safer work environments, stakeholder and Indigenous relations, benchmarking and disclosure, financing, and integration into and reporting against the achievement of business objectives. A more recent development in this area is the impact on portfolio composition and integration into compensation incentives.

3.5 How have boards and management adapted to address the need to oversee and manage ESG issues?

As ESG topics expand and mature, and investors and proxy voting advisory firms continue to demand that companies incorporate and advance ESG strategies across industries and disciplines, boards and management need to stay current on the evolution of ESG topics to meaningfully respond to their stakeholders. The broad application of ESG can seemingly be challenging to manage, but it is widely recognised that there is no uniform solution for how a company should integrate ESG into its operations and framework. However, boards and management that spend time on identifying and prioritising key ESG issues that relate to and impact their primary operations are better positioned to collect data and report on meaningful advancements of their ESG strategies.

Sophisticated stakeholders are no longer satisfied with mere declarations of ESG strategies and targets, and now probe boards and management for data and demonstrable results towards these strategies and targets. Therefore, boards and management that are charged with ESG oversight are increasing the frequency and scope of data collection with the aim of demonstrating the depth and transparency of their ESG reporting, in order to integrate appropriate ESG strategies and targets into their company standards and guide their business objectives and activities. Boards continue to rely primarily on existing committees to address ESG challenges.

4 Finance

4.1 To what extent do providers of debt and equity finance rely on internally or externally developed ESG ratings?

Providers of debt and equity finance rely heavily on externally developed ESG frameworks, standards, and ratings, and with the Canadian regulatory and market development of the CSSB's CSDS 1 and CSDS 2 voluntary guidelines, and the OSFI updated Guideline B-15 to align with the CSSB Standards, the reliance on externally developed ESG frameworks remains. However, the type and level of application of the framework used will vary depending on the financing instrument. For example, there are various categories of green bonds. The first, and most commonly used, in Canada are bonds with green use of proceeds. These bonds are like general obligation bonds, except that all the funds are directed towards green initiatives and projects. The second are project development bonds. The proceeds from this second type of green bond fund specific purpose entities that own either a single project or many green projects. Securitisation bonds are the third type of green bond. These bonds are collateralised by a pool of loans issued to fund numerous green projects. Green bonds are typically issued and monitored following specific frameworks that align with the Green Bond Principles, introduced by the International Capital Market Association ("**ICMA**"). A green bond framework is a document created by the issuer that clearly articulates the company's proposed use of proceeds for the bond. This disclosure enables investors to better assess the green eligibility of the projects and make more informed investment decisions (ICMA, *Sustainability-Linked Bond Principles, Voluntary Process Guidelines,* June 2024) (Sustainalytics, *Green Bond Principles: What Issuers Need to Know,* June 2023). It is usually recommended that issuers obtain a second-party opinion on their green bond framework from an external review provider to confirm its alignment with the four components of the Green Bond Principles (Sustainalytics, *Second-Party Opinion Plans*, 2023). Though these principles are voluntary, they promote transparency, clarity and integrity around sustainable finance projects and how the environmental objectives will be achieved. Issuers who intend to launch a green bond are required to build a green bond framework, which should align with the following four components as specified under the Green Bond Principles (Chartered Professional Accountants Canada, *How to Ensure Finance Drives a Sustainable Economy*, 2023). The 2025 update to the Green Bond Principles emphasises the importance of transparency, accuracy, and integrity in issuer disclosures and reporting. It reaffirms that these obligations must be met through adherence to the Green Bond Principles' core components and key recommendations, which serve as the foundation for credible green bond frameworks and investor confidence.

- **Use of proceeds**: Proceeds of a green bond must be used to finance or refinance green projects. These projects should contribute to environmental objectives such as climate change mitigation, natural resource conservation, and pollution prevention and control. Green projects include assets, investments and activities, as well as other related and supporting expenditures, such as research and development that may relate to more than one category and/or environmental objective.
- **Process for project evaluation and selection**: Green bond issuers should clearly communicate the environmental sustainability of the projects to their investors. This includes the environmental objectives of the project, the process by which an issuer determines the green eligibility of the project and the process to manage any potential material, environmental or associated social risks. A high level of transparency into the issuer's overall objectives, strategy and policy is also encouraged.
- **Management of proceeds**: Proceeds (funds) must be managed properly in a sub-account, a sub-portfolio, or the issuer must demonstrate that there is a formal internal process to manage those funds. This process should be linked and aligned to the lending or investment operations for green projects.

- **Reporting**: Issuers are required to report on the allocation of proceeds to eligible green projects. This is usually communicated in an annual report where the issuer can specify the list of green projects, provide a brief description of the projects, and stipulate the respective allocations. The issuer may also report on the expected impact of its green bonds.

When there is an intentional mix of E&S benefits, the bond is referred to as a sustainability bond, for which the ICMA provides a separate set of guidelines, namely the Sustainability Bond Guidelines (ICMA, *Sustainability-Linked Bond Principles, Voluntary Process Guidelines*, June 2024).

Sustainability-linked bonds ("**SLBs**"), while relatively new in the ESG investing scene, are becoming increasingly popular because unlike traditional green and social bonds, they do not impose restrictions on how the proceeds can be used. Instead, SLBs are linked to the performance of certain key performance indicators ("**KPIs**") in achieving pre-defined sustainability performance targets ("**SPTs**"), and depending on whether this is achieved, certain characteristics of the bonds may vary (e.g., coupon ratchet). A few notable examples are TELUS and Enbridge. TELUS was the first Canadian company to issue SLBs, raising CA$750 million in bonds that pay a low interest rate if the company reduces its greenhouse gas emissions. Calgary-based Enbridge was the first North American pipeline company to offer SLBs, whose US$1 billion sale included goals in reducing carbon emissions and bolstering workforce inclusion.

The Sustainability-Linked Bond Principles ("**SLBP**") are voluntary process guidelines that recommend structuring features, disclosure and reporting for SLBs. They are intended for use by market participants and are designed to drive the provision of information needed to increase capital allocation to such financial products. The SLBP are applicable to all types of issuers and any type of financial capital market instruments. The SLBP are collaborative and consultative in nature based on the contributions of members and observers of the Green Bond Principles and the Social Bond Principles ("**SBP**"), and of the wider community of stakeholders. The SLBP recommend a clear process and transparent commitments for issuers, which investors, banks, underwriters, placement agents and others may use to understand the financial and/or structural characteristics of any given SLB. The SLBP have five core components:

1. Selection of KPIs.
2. Calibration of SPTs.
3. Bond characteristics.
4. Reporting.
5. Verification.

4.2 Do green bonds or social bonds play a significant role in the market?

Actions to address climate change and greenhouse gas emissions continue to play a critical role in supporting the green bonds market. Investors remain interested in green project initiatives, which include, *inter alia*, renewable energy products, clean technology, and green bond principle-based infrastructure. Domestic investors are the dominant consumers of Canadian-issued green bonds that dedicate funds to specific green projects, which are typically renewable energy projects, clean technology initiatives or low-carbon buildings and developments; however, as green bond funds continue to diversify, investments relating to green transportation and water conservation are gaining popularity.

Canadian-issued green bonds remain a modest presence in the international green bond issuance market in comparison to green bond products emerging from the U.S., Europe, and China (Institute for Sustainable Finance, *The Canadian sustainable bond market report*, October 2024). However, consistent with global trends, ESG bonds are quickly gaining popularity in Canada as companies seek to increase their "green" or sustainability credentials through a focus on renewable energy, pollution reduction, or climate change. The global green bond market is continuing its growth with more than US$300 billion in issuance for the first six months of 2025, making up more than 60% of all sustainable debt issued in that period. Since 2006, more than US$3 trillion has been raised through green bonds (Climate Bonds Initiative, *Sustainable Debt Global State of the Market H1 2025*, October 1, 2025). On February 21, 2025, the Government of Canada priced its third new issuance of Canadian-dollar-denominated green bonds, a CA$2 billion seven-year bond, as part of its commitment to regular green bond offerings. This transaction follows the CA$4 billion 10-year green bond issued in February 2024, the CA$2 billion reopening of the February 2024 bond in October 2024, and the CA$5 billion 7.5-year green bond in March 2022. The February 2025 issuance is the third offering under Canada's updated Green Bond Framework, which now includes certain nuclear energy expenditures as eligible uses of proceeds, making Canada the first sovereign issuer to incorporate nuclear projects into a green bond framework. Investor demand was strong, with the final order book exceeding CA$3.1 billion and environmentally and socially responsible investors representing 57% of allocations (Department of Finance Canada, *Canada successfully prices 7-year green bond to raise $2 billion*, February 21, 2025).

The issuance of Canadian green bonds has traditionally been led by public sector issuers (RIA, *Green Bonds – Fact Sheet for Investors,* February 2019), including ISED Export Development Canada ("**EDC**") and subnational issuers in Ontario and Quebec. In support of its climate and environmental objectives, the Government of Canada released its Green Bond Framework in March of 2022 (Government of Canada, *Green Bond Framework*, March 2022) and has since updated its Green Bond Framework to include nuclear energy expenditures, updated taxonomies, international best practices, and evolving investor preferences (Government of Canada, *Green Bond Framework*, November 2023). The framework aligns with the Government's climate and environmental priorities and identifies those expenditures that are eligible for allocation to a green bond. Its core components deal with use of proceeds, process for project evaluation and selection, management of proceeds, and reporting. Both the framework and the allocations of proceeds are subject to independent external review. Following its evaluation of the Government of Canada Green Bond Framework, November 2023, Sustainalytics, an independent ESG research group, released a report concluding that the framework is a credible and transparent plan to deliver positive environmental benefits (Sustainalytics, *Second-Party Opinion Government of Canada Green Bond Framework*, 2023). Against this backdrop, the Government of Canada issued its inaugural CA$5 billion green bond in March 2023, a CA$6 billion green bond in 2024, and a CA$2 billion green bond in 2025 and EDC issued a US$1 billion bond in 2024. In addition to the public sector, continued interest in green bond principle-based investments has attracted the attention of a broader spectrum of issuers, including certain Canadian corporations and pension funds.

4.3 Do sustainability-linked bonds play a significant role in the market?

The size of the sustainable investment market is still small relative to the larger retail fund market in Canada; however,

the sustainable investment market is a growing area, as evidenced by the number of new sustainable fund launches over the last few years. As of October 2024, the SLB market in Canada remains relatively small, accounting for around 10% of the total Canadian green, social, sustainability and sustainability-linked ("**GSS+**") bond market (Institute for Sustainable Finance, *The Canadian sustainable bond market report*, 2024).

With regard to regulatory action, the OSC approved amendments to the TSX Rule Book to reflect trading of sustainable bonds on the TSX, expanding the types of securities that may be traded on the TSX to include sustainable bonds. Sustainable bonds became available for trading on the TSX as of March 1, 2021 (TSX, *TMX Equities Announces Sustainable Bonds Production Launch Details* (n.d.)).

The main goal of the sustainable bond initiative is to increase the accessibility and transparency of securities that are already available to Canadian investors.

4.4 What are the major factors impacting the use of these types of financial instruments?

A major factor impacting the use of sustainable bonds, including green and social bonds, is the lack of regulatory verification and standardisation for these types of financial instruments, as discussed further in question 4.5 below. A consequence of a voluntary system for verification is that many bonds arguably lack transparency as to which sustainable projects or technologies will be financed. The need for consistency and transparency is heightened in the context of labelling green bonds as "greenwashing" or a reduction in standards, which could shake investor confidence in these valuable financial instruments. Given investors' expectations and sophistication, issuers are pressured to enhance transparency and provide more robust contractual commitments.

4.5 What is the assurance and verification process for green bonds? To what extent are these processes regulated?

As discussed above, the Green Bond Principles are the leading framework and guideline resource for green bond supply in Canada (Institute for Sustainable Finance, *The Canadian sustainable bond market report*, October 2024). The Green Bond Principles are voluntary process guidelines that recommend principles of transparency, disclosure and integrity in the development of green bonds, and are intended for broad use by the market, including issuers, various stakeholders, investors, and underwriters. According to the ICMA framework, the four principles applicable to green bonds, which are also applicable to social and sustainability bonds, include the use of proceeds, process for project evaluation and selection, management of proceeds, and reporting.

Canadian green bond programmes can be further bolstered by independent reviews from organisations such as Sustainalytics and the Centre for International Climate and Environmental Research – Oslo ("**CICERO**"). In 2021, the International Organization for Standardization ("**ISO**") published parts of its international green bond standard (the "**ISO 14030 series**"), which may also enhance investor appetite for green bonds. In particular, ISO 14030–4:2021 establishes requirements for verification bodies that review claims of conformity to the ISO 14030 series (ISO, *ISO 14030–4:2021 Environmental performance evaluation – Green debt instruments – Part 4: Verification programme requirements,* September 2021).

4.6 What other developments and factors are driving or hindering the financing of green projects?

Currently, no Canadian regulations have been established to provide verification of green bonds – only voluntary guidelines. The voluntary approach to green bond verification has so far led to a fragmented domestic and global market. This fragmentation creates uncertainty about what qualifies as a green bond and may hinder the growth of these financial instruments.

The newly enacted greenwashing provisions under the *Competition Act*, combined with the expansion of private access rights in June 2025, have raised concerns about "greenhushing" in the marketplace. This concern stems from increased ambiguity in compliance requirements for companies making environmental claims, alongside rising legal costs and litigation risks. Consequently, companies may hesitate to make ESG-related disclosures – even those backed by credible evidence – due to fear of frivolous or vexatious lawsuits, which could deter the financing of green projects by potential investors seeking transparency and robust ESG reporting.

In 2025, recent political rhetoric and inquiry into ESG initiatives poses a strong headwind for ESG-linked financing instruments. Market commentary indicates that heightened review and commentary of sustainability policies in the U.S. may have also affected Canadian markets, creating a further risk for issuers and institutional investors. This environment has led to more conservative structuring choices, which favours traditional useof-proceeds green bonds over complex ESG-linked formats, such as SLBs (TD Securities, *Sustainable Finance Year in Review and 2025 Outlook*, 2025).

5 Trends

5.1 What are the material trends related to ESG?

Despite the recent trend in certain jurisdictions of moderating the prominence of ESG, continued action from institutional investors will likely continue to be a focus in Canada for businesses to take responsibility for externalities affecting the environment and society. While recent policy shifts in the U.S. have introduced uncertainty and heightened political polarisation around ESG, institutional investors generally remain committed to ESG integration, emphasising risk management over targeted ESG investment strategies.

At the provincial level, Alberta launched its Extended Producer Responsibility programme for single-use products, packaging and paper products, as well as hazardous and special products, on April 1, 2025. This initiative shifts the cost of recycling from municipalities and taxpayers to the producers and manufacturers that introduce these materials into the marketplace. Phase I began with communities that already have existing services and will expand to include all remaining communities by October 1, 2026. The Alberta Recycling Management Authority oversees the programme, and producers are required to register with an approved Producer Responsibility Organization to fulfil their obligations. The programme aligns Alberta with other jurisdictions such as British Columbia, Ontario, Quebec and New Brunswick, and places responsibility for environmental impacts on producers, requiring companies to integrate compliance, reporting and waste management considerations into their ESG and business strategies (Government of Alberta, *Extended Producer Responsibility*, 2025).

Despite a pause in regulatory developments in some respects, an example of the push for standardisation is the global mining sector, which in October 2024 launched an initiative to streamline and harmonise the industry's fragmented ESG

standards. The effort, led by major organisations including the International Council on Mining and Metals, the Mining Association of Canada, and the World Gold Council, aims to simplify reporting, enhance transparency, and improve comparability. The initiative is designed to align ESG disclosures with international frameworks such as the ISSB Standards and the European Union Corporate Sustainability Reporting Directive (Center for Sustainability and Excellence, *Mining Sector's ESG Standards Overhaul: Preparing for the Transition*, July 30, 2025).

Canada's corporate landscape is expected to maintain a strong focus on climate and biodiversity within ESG priorities, alongside a growing commitment to Indigenous reconciliation and economic development, positioning the country as a global leader in building meaningful partnerships with Indigenous communities (Millani, *Semi-Annual ESG Sentiment Study of Canadian Institutional Investors*, February 12, 2025).

Sustainability and responsible environmental practices will also continue to be a priority, with a transition towards third-party standardisation and frameworks, including verification and benchmarking. With respect to ESG factors generally, investors will likely also continue to push for better disclosure and explanation as to how they integrate ESG metrics into key business strategies, and measurement and disclosure of their effects.

The recent adoption of the *Modern Slavery Act* and the amendments to the *Competition Act* have also increased enforcement risk and the need for more granular policies and procedures around preparation and verification of disclosures.

Although the landscape has markedly shifted over the last year regarding ESG, investors, consumers and other stakeholders' expectations remain resolute. Topics such as climate transition plans, science-based targets, indigenous economic inclusion and board accountability continue to anchor responsible investment. As a recent report put it, if some issuers have adjusted their public positioning, investors view this as a time for strategic recalibration, not retreat (Milani, *A climate change: Canadian investor perspectives*, September 8, 2025).

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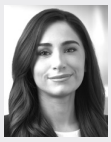

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