



# State of Sustainable Finance Regulation: 2022 Report





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We would also like to thank Tim Nash of  for his helpful contributions to this report.

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**Date of Publication:** August 2022 (updated September 2022)

# Introduction

Motivated by climate change concerns, investors are increasingly seeking investments that (i) do not exacerbate the climate crisis; or (ii) actively work to address it.<sup>1</sup>

Activities integrating these interests in investment decisions are commonly referred to as **sustainable finance** or **climate investing**.<sup>2</sup> And though the term “sustainable finance” is generally (though not universally) regarded as also encompassing the integration of social and corporate governance concerns in investment decisions,<sup>3</sup> for the purposes of this report, we will be applying the term to financial activities concerned *primarily* with environmental sustainability.

Sustainable finance investment strategies can be divided into two broad general categories: **negative screening** (sometimes, but not always, applied in the context of environmental, social, and governance (ESG) investing) and **impact investing**. The former (ostensibly) uses certain metrics to screen out investments deemed environmentally problematic and/or particularly vulnerable to climate-related risks while prioritizing financial returns.<sup>4</sup> The latter directs capital toward assets regarded as contributing to positive social and/or environmental outcomes, with maximizing financial returns being a secondary objective.<sup>5</sup>

To capitalize on interest in sustainable finance, various firms promote investment products as ESG or otherwise “sustainable” using their own subjective criteria or that of third-party ratings agencies. However, differing perspectives regarding the legitimacy of such criteria (to the extent it’s even applied) have led critics to lambast ESG and other sustainable finance trends as “greenwashing” and “a scam”.<sup>6</sup> Recognizing the validity of such criticisms, numerous governments have initiated sustainable finance regulation efforts to establish mandatory industry standards, ensure the reliability of investor-facing disclosures, and encourage markets to support national (or subnational) emission reduction goals.

Applicable regulations (and proposed regulations) generally fall into two distinct, but often-confused categories: **ESG product disclosures** and **climate-related financial disclosures**. The former regulates the promotion of financial products with ESG or sustainable characteristics,

largely by requiring certain disclosures about their social and environmental *bona fides*. The latter requires disclosure of climate-related information (e.g., emissions, net-zero plan details, etc.) from publicly traded companies and other large institutions.

## History

Though various forms of ethical investing have existed for centuries, sustainable finance as we now know it emerged from the broader socially responsible investing (SRI) movement that took institutional form in the 1960s, largely in response to the social concerns of the period, such as the American civil rights movement and the Vietnam War.<sup>7</sup> Notwithstanding that the modern environmental movement is regarded as beginning roughly around this time as well (*i.e.*, the mid-late 1960s or early 1970s),<sup>8</sup> environmental issues only experienced popular integration with SRI priorities in the 1990s and 2000s.<sup>9</sup>

### (a) ESG

In the early 2000s, the UN Global Compact, the International Finance Corporation (IFC), and the Swiss government jointly published a report called *Who Cares Wins: Connecting Financial Markets to a Changing World*.<sup>10</sup> It proposed employing a set of metrics to “better integrate environmental, social and governance issues in analysis, asset management and securities brokerage.”<sup>11</sup> Over the next 20 years, firms and institutions adopted the report’s proposals and moulded them as they deemed fit, ultimately shaping ESG investing as we know it today.

ESG is now sometimes employed by ratings agencies and investment firms in the context of negative screening to, respectively, rate and screen investments for social and environmental impact using criteria measuring how a company impacts the environment (“E”); interacts with or selects its customers, employees, and suppliers (“S”); and performs in terms of board diversity, executive pay, and corporate transparency, among other things (“G”).<sup>12</sup> Poor performers as measured by applicable rating systems receive low scores and may be cut from certain ESG funds or indexes as a result.<sup>13</sup>



## **(b) Climate-Related Financial Disclosures**

Seeking to establish means by which the financial sector might better address and account for climate-related issues, the Financial Stability Board, then-chaired by former Bank of Canada and Bank of England Governor Mark Carney, established the Task-Force for Climate-Related Financial Disclosures (TCFD) in 2015.<sup>14</sup>

The TCFD is an organization whose principal activity is issuing recommendations for how firms should disclose risks and opportunities they face related to climate change.<sup>15</sup> Its chair is Bloomberg LP founder and former New York City Mayor Michael Bloomberg.<sup>16</sup>

Since the TCFD's foundation in 2015, various companies have voluntarily adopted TCFD recommendations in some form and employed them in corporate disclosures, often as a means of appealing to climate-conscious investors and institutions. However, the lack of mandatory standards regarding voluntary disclosures results in inconsistent application that may confuse or mislead investors.<sup>17</sup> And many firms foregoing such disclosures - particularly where such information would be unappealing to investors - may gain an undeserved advantage over those devoting resources to disclosure issuance.

Accordingly, governments are now promulgating mandatory climate-related disclosure requirements using the TCFD recommendations as a framework. Applicable regulations aim to ensure such disclosures accurately reflect investment products' climate impact and exposure, and that firms do not benefit from intentional opaqueness regarding the climate-related risks facing their operations.

## **ESG Product Disclosures**

The European Union's Sustainable Finance Disclosure Regulation (SFDR) appears to currently be the only major ESG product disclosure regulation in effect.<sup>18</sup> An American ESG product disclosure regulation with similar features was proposed in May 2022, and is currently undergoing notice and comment before potential implementation.<sup>19</sup>

## (a) Sustainable Finance Disclosure Regulation (EU)

The EU's SFDR took effect in March 2021, establishing disclosure requirements for European financial market participants and investment products.<sup>20</sup>

Applicable firms must disclose the adverse impact their investment policies may have concerning “sustainability risks” (*i.e.*, environmental, social, and governance considerations, such as climate change, that could negatively affect the value of investments) and “sustainability factors” (*i.e.*, environmental, social, and governance considerations pertaining to the firm's own operations, such as whether the firm's investments will result in increased carbon emissions). Firms that do not consider the adverse impacts of investment decisions on sustainability risks and factors must explain their decision not to do so.<sup>21</sup>

Firms must also categorize investment products as falling under one of the following articles:

- **Article 6:** products with no sustainability risk considerations (*i.e.*, non-ESG);
- **Article 8:** products promoting certain ESG characteristics (*i.e.*, ESG); or
- **Article 9:** products with sustainability promotion as their principal objective (*i.e.*, impact investing).<sup>22</sup>

For Article 8 and 9 products, firms must disclose how the product's marketed ESG objectives will be achieved.<sup>23</sup> The EU Taxonomy Regulation, which serves as a classification system of “economic activities significantly contributing to environmental objectives”, defines what activities contribute to environmental and social objectives for the purposes of the SFDR.<sup>24</sup>

The SFDR's application had a clear filtering effect on financial products marketed as featuring ESG characteristics, with EU sales of such products dropping by \$2 trillion between 2018 and 2020 in the leadup to the rule's implementation.<sup>25</sup>



## **(b) Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices (US)**

In May 2022, the US Securities and Exchange Commission (SEC) proposed its *Enhanced Disclosure* regulation, intended to standardize disclosure requirements for American market investment products promoted as featuring ESG characteristics.<sup>26</sup> The proposed rule requires funds to identify as falling within one of three categories, each with unique applicable rules:

- **Integration Funds** consider ESG factors among others in making investment selections.<sup>27</sup> Firms must explain which specific ESG factors the fund focuses on and how ESG factors are incorporated in the fund's investment decision process.<sup>28</sup>
- **ESG-Focused Funds** concentrate on one or more ESG factors which are a significant or primary consideration in (i) selecting investments; or (ii) the fund's engagement strategy with companies the fund invests in. Firms offering this category of fund will be required to disclose greenhouse gas emissions associated with their portfolio investments.<sup>29</sup>
- **Impact Funds** are a subset of ESG-Focused Funds intended to achieve a specific ESG impact. Firms must describe the specific impact(s) such funds seek to achieve and summarize progress in achieving such impact(s).<sup>30</sup>

The proposed rule is currently undergoing notice and comment before implementation.

## **Climate-Related Financial Disclosures**

Financial authorities in the EU,<sup>31</sup> US,<sup>32</sup> and Canada all recently proposed climate-related disclosure rules for entities participating in financial markets, such as investment firms and publicly traded companies.<sup>33</sup> The UK became the first G20 nation to implement mandatory climate-related financial disclosure rules on April 6, 2022, when its *Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022* entered into force.<sup>34</sup> New Zealand

also passed a law last year requiring large financial institutions and certain businesses to make climate-related financial disclosures, starting in 2023.<sup>35</sup>

All aforementioned jurisdictions' climate-related financial disclosure laws and regulations are modeled on TCFD recommendations, and have as their objective helping investors and institutions understand the climate-related risks and opportunities associated with their investments.

### **(a) Corporate Sustainability Reporting Directive (EU)**

The EU's Non-Financial Reporting Directive (NFRD) already requires large institutions and publicly traded companies to disclose certain information regarding their management of environmental and social issues.<sup>36</sup> On April 21, 2021, however, the European Commission adopted the Corporate Sustainability Reporting Directive (CSRD), which builds upon the NFRD.<sup>37</sup>

The CSRD will:

- extend reporting requirements to all large companies (*i.e.*, those with 500 or more employees);
- require that reporting information be subject to audit;
- make reported information machine-readable; and
- generally require more detail than was required under the NFRD.<sup>38</sup>

The first set of standards under the regulation must be adopted by October 2022.<sup>39</sup>

### **(b) The Enhancement and Standardization of Climate-Related Disclosures for Investors (US)**

The SEC's proposed regulations would compel publicly traded companies to report how:

- corporate governance policies anticipate responding to climate-related risks and opportunities;
- climate-related risks and opportunities will impact business operations;
- climate-related risks and opportunities are identified, assessed, and managed; and



- metrics and targets are used to assess and manage climate-related risks, such as the entity's greenhouse gas emissions.<sup>40</sup>

Covered parties will be required to disclose their Scope 1 and Scope 2 emissions.<sup>41</sup> Scope 3 emissions must also be disclosed if considered “material” to the business’s operations, including if they materially impact the company’s stated emission-reduction goals.<sup>42</sup> The different emission scope categories are defined as follows:

- **Scope 1** emissions are generated directly by an entity;<sup>43</sup>
- **Scope 2** emissions are generated by virtue of an entity’s use of electricity, steam, heating, or cooling;<sup>44</sup> and
- **Scope 3** emissions are generated “from assets not owned or controlled” by an entity, but which are generated indirectly along its value chain (*e.g.*, purchased goods and services, waste, transportation, investments, etc.).<sup>45</sup>

Companies that set emissions reduction targets must also disclose how they will be achieved.<sup>46</sup>

### **(c) National Instrument 51-107: Disclosure of Climate-Related Matters (Canada)**

Unlike most other industrialized nations, for constitutional reasons, Canada does not have a federal securities law or agency.<sup>47</sup> Each province and territory regulates securities by means of its own securities law, and jurisdictions often work together through the CSA to streamline regulation across Canada.<sup>48</sup> CSA regulations take the form of “National Instruments” which do not have the force of law, though they’re generally adopted or accepted as law by provincial regulators.

In October 2021, the CSA proposed a climate-related financial disclosure regulation.<sup>49</sup> National Instrument 51-107, like the SEC’s proposed rule, would require publicly traded firms to disclose Scope 1, 2, and 3 emissions data as well as climate-related risks and opportunities information in

line with TCFD recommendations.<sup>50</sup> Canadian businesses can, however, opt-out of disclosing their Scope 1, 2, and 3 emissions if they justify nondisclosure.<sup>51</sup>

#### **(d) Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 (UK)**

The UK regulations require publicly traded companies, banks, and insurance companies with more than 500 employees to provide climate-related financial disclosures in their annual strategic reports. Much like the SEC's proposed regulations, the UK regulations require companies to disclose, among other climate-related information:

- how climate-related risks and opportunities are identified, assessed, and managed;
- governance arrangements relating to management of climate-related risks and opportunities;
- how climate-related risk management is integrated in the company's general risk management protocols; and
- climate-related risks and opportunities associated with operations, and how those risks and opportunities are assessed with reference to applicable time periods.<sup>52</sup>

If a company believes climate-related disclosure “is not necessary for...understanding...the company's business” it must “provide a clear and reasoned explanation” for nondisclosure.<sup>53</sup>

#### **(e) Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (NZ)**

New Zealand's climate-related financial disclosure law, passed in 2021 but only taking effect in 2023, will require publicly traded companies, banks, insurers, investment managers, and “non-bank deposit takers” to disclose climate-related risks and opportunities around the standard TCFD-recommended “thematic areas” of governance, strategy, risk management, and metrics/targets.<sup>54</sup> The standards of disclosure will be more specifically articulated by the External Reporting Board, with New Zealand's Financial Markets Authority responsible for “monitoring, reporting, and enforce[ing]...the regime.”<sup>55</sup>



# Backlash

ESG, climate-related disclosures, and the general concept of “stakeholder capitalism” are routinely subject to visceral critiques from both the political left and right.<sup>56</sup>

To the extent left-wing critiques regard capitalism as compatible with a sustainable climate, most criticisms are directed at rampant greenwashing in the ESG space.<sup>57</sup> In one highly-publicized recent backlash incidence, Tesla CEO Elon Musk derided ESG as “a scam” following the EV manufacturer’s removal from the S&P ESG 500 index, despite the index’s continued listing of oil companies like ExxonMobil.<sup>58</sup> Various large asset managers – most notably BlackRock - have also come under fire for promoting sustainable investing even as they continue investing in coal and lobbying against regulation that would in fact further the sustainable outcomes they ostensibly support.<sup>59</sup>

Right-wing critiques object to the injection of various non-financial considerations in corporate and financial decision-making.<sup>60</sup> Critics claim this misguides the market’s “invisible hand” at best, and creates endless corrosive and distracting culture wars at worst.<sup>61</sup>

In furtherance of such right-wing objections, conservative governments at the federal and state levels in the US have enacted laws and regulations intended to discourage ESG investing. The Republican-controlled Texas government, for example, passed a law last year barring state institutions from investing in firms with fossil-unfriendly investment policies (with some exceptions).<sup>62</sup> In another example from the latter days of the Trump presidency, the Department of Labour issued a regulation prohibiting public pensions from considering non-financial matters in investment decision-making (the Biden administration declined to enforce the rule and has proposed a replacement that may actually encourage pensions to consider ESG factors).<sup>63</sup>

# Sustainable Finance Services

Is your business or organization looking for legal assistance with sustainable finance matters? Green Economy Law Professional Corporation can help ensure all your bases are covered. For more information regarding legal services, please contact the firm at 647-725-4308 or via email at [info@greeneconomylaw.com](mailto:info@greeneconomylaw.com).

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*The firm would like to give a special thanks to Tim Nash of Good Investing, one of the firm's corporate clients, for his helpful contributions of this report. Those interested in learning more about investing responsibly and in accordance with their values may learn more about Good Investing's services at [www.goodinvesting.ca](http://www.goodinvesting.ca).*

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<sup>1</sup> See Talib Visram *ESG investing continued to soar in 2021. The government could boost it even more*, FAST COMPANY (December 28, 2021); see also Shanny Basar, *Interest in Impact Investing at All-Time High*, MARKETS MEDIA (May 25, 2022). Admittedly, 2022 has seen a decrease in the value of equities generally, including ESG and otherwise “sustainable” equities and other investment products. Though it is not clear yet if this indicates a long-term loss of interest in ESG and/or sustainable investing. See Nathaniel Bullard, *ESG Investment Cools as the Sector’s Notoriety Grows*, BLOOMBERG (June 16, 2022).

<sup>2</sup> *Sustainable Finance*, CANADA (last updated May 9, 2022) (accessible at <https://www.canada.ca/en/department-finance/programs/financial-sector-policy/sustainable-finance.html>); see also *Why Climate Investing?*, MSCI (accessible at <https://www.msci.com/our-solutions/climate-investing>).

<sup>3</sup> See *id.*; but cf. *Sustainable Finance*, WIKIPEDIA (accessible at [https://en.wikipedia.org/wiki/Sustainable\\_finance](https://en.wikipedia.org/wiki/Sustainable_finance)) (“Sustainable finance or green finance is the set of financial regulations, standards, norms and products that pursue an environmental objective, and in particular to facilitate the energy transition.”).

<sup>4</sup> Kezia Farnham, *ESG Metrics: What Matters, and What Should You Measure?*, DILIGENT (April 6, 2022).

<sup>5</sup> James Chen, *Impact Investing*, INVESTOPEDIA (last updated April 12, 2022); to borrow the terminology of Good Investing, negative screening focuses on “Doing Less Evil”, whereas impact investing focuses on “Doing More Good”. See *Socially Responsible Investing*, GOOD INVESTING (accessible at <https://www.goodinvesting.com/your-priorities/responsible>).

<sup>6</sup> See Tim Quinson, *Greenwashing Is Increasingly Making ESG Moot*, BLOOMBERG (March 16, 2022); see also Eloise Barry, *Why Tesla CEO Elon Musk Is Calling ESG a ‘Scam’*, TIME (May 25, 2022).

<sup>7</sup> See Blaine Townsend, *From SRI to ESG: The Origins of Socially Responsible and Sustainable Investing*, Vol. 1, Iss. 1, J. IMPACT & ESG INVESTING 1 (Fall 2020) (accessible at <https://bailard.com/history-socially-responsible-investing-esg-investing>).

<sup>8</sup> See *id.* Historians of the modern environmental movement typically point to its beginning in earnest either with the release of Rachel Carson’s ecological classic 1964 nonfiction work *Silent Spring*, or in the early years of the 1970s, which featured the establishment of Earth Day, the US Environmental Protection Agency, and passage of foundational American environmental laws such as the *Clean Air Act*.

<sup>9</sup> See *id.*

<sup>10</sup> *Who Cares Wins*, THE GLOBAL COMPACT (2004) (accessible at [https://www.unepfi.org/fileadmin/events/2004/stocks/who\\_cares\\_wins\\_global\\_compact\\_2004.pdf](https://www.unepfi.org/fileadmin/events/2004/stocks/who_cares_wins_global_compact_2004.pdf)).

<sup>11</sup> See *id.*

<sup>12</sup> See Alexis Rhiannon, *ESG Investing: How to build an ethical portfolio that reflects your values*, BUSINESS INSIDER (May 4, 2021); see also *Environmental, Social, and Governance (ESG) Criteria*, INVESTOPEDIA (last updated May 18, 2022) (accessible at <https://www.investopedia.com/terms/e/environmental-social-and-governance-esg-criteria.asp>).

<sup>13</sup> See, e.g., Barry *supra* note 6.

<sup>14</sup> See *History*, TASK FORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES (<https://www.fsb-tcfd.org/about/#history>). The Financial Stability Board is an international body established by the G20 that makes recommendations to benefit the global financial system. See also *About the FSB*, FINANCIAL STABILITY BOARD (last updated November 16, 2020) (accessible at <https://www.fsb.org/about/>).

<sup>15</sup> See *id.* at *History*.

<sup>16</sup> See *id.*

<sup>17</sup> See Consultation Climate-related Disclosure Update and CSA Notice and Request for Comment Proposed National Instrument 51-107 Disclosure of Climate-related Matters (October 18, 2021) (accessible at <https://www.bpsc.bc.ca/-/media/PWS/New-Resources/Securities-Law/Instruments-and-Policies/Policy-5/51107-CSA-Notice-and-Request-for-Comment-October-18-2021.pdf>) (“The CSA note concerns about current climate-related disclosures, including...issuers’ climate-related disclosures may not be complete, consistent, and comparable...qualitative information is often limited and not necessarily consistent.”).

<sup>18</sup> Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (accessible at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R2088&from=EN>).

<sup>19</sup> See Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, 17 C.F.R. § 200, 230, 232, 239, 249, 274, and 279 (2022) (accessible at <https://www.sec.gov/rules/proposed/2022/ia-6034.pdf>).

<sup>20</sup> See Alex Christian, *The Sustainable Finance Disclosure Regulation (SFDR) and Its Impact on the U.S. Market*, OPENINVEST (April 21, 2021).

<sup>21</sup> See *supra* note 18.

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<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

<sup>24</sup> See HOW DOES THE EU TAXONOMY FIT WITHIN THE SUSTAINABLE FINANCE FRAMEWORK?, EUROPEAN COMMISSION ([https://ec.europa.eu/info/sites/default/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/sustainable-finance-taxonomy-factsheet\\_en.pdf](https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/sustainable-finance-taxonomy-factsheet_en.pdf)).

<sup>25</sup> See Alastair Marsh, *European ESG Assets Shrank by \$2 Trillion After Greenwash Rules*, BLOOMBERG (July 19, 2021).

<sup>26</sup> See Allison Herren Lee, *It's Not Easy Being Green: Bringing Transparency and Accountability to Sustainable Investing*, US SECURITIES AND EXCHANGE COMMISSION (May 25, 2022).

<sup>27</sup> See *id.*

<sup>28</sup> See *supra* note 18.

<sup>29</sup> See Press Release, Securities and Exchange Commission, SEC Proposes to Enhance Disclosures by Certain Investment Advisers and Investment Companies About ESG Investment Practices (May 25, 2022) (*accessible at* [https://www.sec.gov/news/press-release/2022-92?utm\\_medium=email&utm\\_source=govdelivery](https://www.sec.gov/news/press-release/2022-92?utm_medium=email&utm_source=govdelivery)).

<sup>30</sup> See *id.*

<sup>31</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting (*accessible at* <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0189&from=EN>).

<sup>32</sup> The Enhancement and Standardization of Climate-Related Disclosures for Investors, 17 C.F.R. § 210, 229, 232, 239, and 249 (2022) (*accessible at* <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>).

<sup>33</sup> *Supra* note 17.

<sup>34</sup> Will Land & Chris Papanicolaou, *UK Introduces New Climate-Related Disclosure Regulations for UK Companies and LLPs*, JONES DAY (May 24, 2022) (*accessible at* <https://www.jdsupra.com/legalnews/uk-introduces-new-climate-related-2385126/>); *see also* The Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 (UK) (*accessible at* <https://www.legislation.gov.uk/uksi/2022/31/made/data.pdf>).

<sup>35</sup> *Mandatory climate-related disclosures*, MINISTRY FOR THE ENVIRONMENT (last updated June 17, 2022) (*accessible at* <https://environment.govt.nz/what-government-is-doing/areas-of-work/climate-change/mandatory-climate-related-financial-disclosures/>); *see also* Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021/39) (*accessible at* <https://legislation.govt.nz/bill/government/2021/0030/latest/LMS479633.html?src=qs>).

<sup>36</sup> See *Corporate sustainability reporting*, EUROPEAN COMMISSION (*accessible at* [https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting\\_en](https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en)); *see also* Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups Text with EEA relevance (*accessible at* <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0095&from=EN>).

<sup>37</sup> See *id.*; *see also supra* note 31.

<sup>38</sup> See *Corporate sustainability reporting supra* note 36.

<sup>39</sup> See *id.*

<sup>40</sup> See *supra* note 32; *see also* FINAL REPORT: RECOMMENDATIONS OF THE TASK FORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES, TASK FORCE ON CLIMATE RELATED FINANCIAL DISCLOSURES (June 2017) (*accessible at* <https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf>).

<sup>41</sup> The scope-based emission classification system was developed by Greenhouse Gas Protocol, an organization that emerged from a collaboration between the World Resources Institute and the World Business Council for Sustainability in the late 90s. See *About Us*, GREENHOUSE GAS PROTOCOL (*accessible at* <https://ghgprotocol.org/about-us>).

<sup>42</sup> See *supra* note 32.

<sup>43</sup> *Scope 1 and Scope 2 Inventory Guidance*, ENVIRONMENTAL PROTECTION AGENCY (last updated September 29, 2021) (<https://www.epa.gov/climateleadership/scope-1-and-scope-2-inventory-guidance>).

<sup>44</sup> GHG PROTOCOL SCOPE 2 GUIDANCE, GREENHOUSE GAS PROTOCOL (2015) ([https://ghgprotocol.org/sites/default/files/standards/Scope%202%20Guidance\\_Final\\_Sept26.pdf](https://ghgprotocol.org/sites/default/files/standards/Scope%202%20Guidance_Final_Sept26.pdf)).

<sup>45</sup> *Scope 3 Inventory Guidance*, ENVIRONMENTAL PROTECTION AGENCY (last updated May 12, 2022) (<https://www.epa.gov/climateleadership/scope-3-inventory-guidance>).

<sup>46</sup> *Supra* note 17.

<sup>47</sup> See Reference re Pan-Canadian Securities Regulation, 2018 SCC 48.



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<sup>48</sup> *Who We Are*, CANADIAN SECURITIES REGULATORS (accessible at <https://www.securities-administrators.ca/about/who-we-are/>).

<sup>49</sup> See *supra* note 17.

<sup>50</sup> *Canadian securities regulators seek comment on climate-related disclosure requirements*, CANADIAN SECURITIES ADMINISTRATORS (October 18, 2021) (accessible at <https://www.securities-administrators.ca/news/canadian-securities-regulators-seek-comment-on-climate-related-disclosure-requirements/>).

<sup>51</sup> Eugene Ellmen, *U.S. SEC's tough new climate disclosure rules put pressure on Canada to follow suite*, CORPORATE KNIGHTS (March 31, 2022).

<sup>52</sup> Companies (Strategic Report) *supra* note 34 at s. 4(e).

<sup>53</sup> *Id.* at s. 4(f).

<sup>54</sup> See *Mandatory climate-related disclosures supra* note 35.

<sup>55</sup> *Id.*

<sup>56</sup> See John Howell, *ESG is huge and terribly flawed. Now what?*, GREENBIZ (September 22, 2021); see also Jeff Green & Saijel Kishan, *America's Political Right Has a New Enemy No. 1: ESG Investors*, BLOOMBERG (May 20, 2022); see also Steve Denning, *Why Stakeholder Capitalism Will Fail*, FORBES (January 5, 2020).

<sup>57</sup> See Howell *supra* note 56.

<sup>58</sup> See Barry *supra* note 6.

<sup>59</sup> See Silla Brush, *BlackRock Urges SEC to Change Climate-Risk Disclosure Plan*, BLOOMBERG (June 29, 2022).

<sup>60</sup> See Denning *supra* note 56; see also Green & Kaishan *supra* note 56.

<sup>61</sup> See Bill Flaig, *Investors Should Reject the Woke Nonsense of ESG funds*, CALIFORNIA GLOBE (May 10, 2022); see also Denning *supra* note 56; see also Green & Kaishan *supra* note 56.

<sup>62</sup> See Rachel Adams-Heard, *Texas Targets Wall Street in Fight Over ESG Investing*, Bloomberg (June 15, 2021).

<sup>63</sup> See Financial Factors in Selecting Plan Investments, 29 C.F.R. § 2509 and 2550 (2020) (accessible at <https://www.govinfo.gov/content/pkg/FR-2020-11-13/pdf/2020-24515.pdf>); see also Elizabeth Goldberg, et al., *DOL has a new vision for ESG: Which stakeholders need to take notice?*, REUTERS (March 14, 2022).