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Via email: [climate-climate@osfi-bsif.gc.ca](mailto:climate-climate@osfi-bsif.gc.ca)

Ben Gully  
Assistant Superintendent, Regulation Sector  
Office of the Superintendent of Financial Institutions  
255 Albert Street, 12<sup>th</sup> Floor  
Ottawa, ON K1A 0H2

Dear Mr. Gully:

**Re: Climate-Related Risks for Federally Regulated Financial Institutions and Pension Plans**

The Canadian Bar Association Pensions and Benefits Law Section (CBA Section) is pleased to comment on the Office of the Superintendent of Financial Institution's discussion paper, *Navigating Uncertainty in Climate Change: Promoting Preparedness and Resilience to Climate-Related Risks*.

The CBA is a national association of over 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section contributes to national policy, reviews developing pensions and benefits legislation and promotes harmonization. Our members are involved in all aspects of pensions and benefits law, including counsel who advise pension and benefit plan administrators, employers, unions, employees and employee groups, trust and insurance companies, pension and benefit consultants, and investment managers and advisors.

While the discussion paper poses several questions, the CBA Section answers questions related to federally-regulated pension plans within its expertise.

**Question 8: What are the key considerations for incorporating climate-related risks into the FRPP's Statement of Investment Policies and Procedures (SIP&P)?**

The CBA Section supports the incorporation of climate-related risk assessment in SIP&Ps through disclosure of how federally regulated pension plans (FRPPs) consider ESG factors in making investment decisions, like the approach adopted under Ontario's *Pension Benefits Act*.

Given the urgent need to address climate-related risks and the growing recognition that plan administrators' duty of prudence in financial decision-making requires consideration of these risks, it would be appropriate in most cases for OSFI to adopt reporting requirements that go beyond Ontario's regulations. This approach would serve OSFI's goal of encouraging FRPPs to adopt investment strategies that account for the risks and opportunities associated with climate change

and the transition to a low carbon economy. In addition, it would help address what international observers call a lack of guidance and uniformity in the Canadian regulatory system for the integration of climate-related risks into pension fund investment strategies.<sup>1</sup>

The CBA Section supports ESG disclosure requirements that build on Ontario's in two respects: first, by making ESG disclosure mandatory for all FRPPs and, second, by giving more guidance and clearer definitions of ESG factors generally and on climate-change risks in particular.

**Mandatory ESG disclosure:** Ontario's regulations require pension plan administrators to disclose whether ESG factors are considered and, if so, how. Requiring ESG reporting on all SIP&Ps would encourage more ESG-informed investment strategies among FRPPs.

This approach is consistent with the recommendations of the 2019 *Final Report of the Expert Panel on Sustainable Finance*, which support mandatory disclosure by FRPPs of how climate-change risk is considered in financial decision-making, including any rationale for non-consideration.<sup>2</sup> In our view, adopting this approach federally would lead the way for implementation of similar requirements in other Canadian jurisdictions. On the other hand, we encourage OSFI to take an approach that is not so prescriptive that it undermines the fiduciary discretionary authority granted to plan administrators when investing plan assets, nor so cumbersome that it generally discourages the establishment and maintenance of pension plans.

**Guidance and clear definitions of ESG factors generally and on climate-change risks in particular:** The CBA Section also encourages OSFI to adopt a more robust definition of ESG factors, particularly for climate change. Ontario's regulations contain no definition of ESG factors, but the provincial regulator published guidance when the regulations were implemented in 2016.<sup>3</sup> This guidance defines environmental factors as relating to "a company or industry's interactions with the physical environment," but contains no reference to climate change. We support an updated and significantly more detailed definition of environmental factors that specifically highlights the investment concerns of climate change and the transition to a low carbon economy.

OSFI's guidance should also acknowledge that the complexity of climate-related risk necessarily results in informational uncertainty. It should be clarified to FRPP administrators that the imprecision of available information is not a bar to a prudent investment strategy that accounts for climate-risk. It should also be clarified that investment decisions made in good faith, in the interest of plan beneficiaries and considering climate concerns, will satisfy administrators' fiduciary obligations, notwithstanding that they are made in a context of informational uncertainty.

OSFI should clarify that consideration of ESG factors is not a distinct domain of investment decision-making but is a component of the valuation and assessment of future asset performance over the short, medium and long term. In particular, climate-change risk should be identified as a financially material consideration for the purpose of disclosure on SIP&Ps.

Again, this guidance would reflect the developing consensus that the duty of prudence entails consideration of climate-change risk and would be consistent with recommendations of the *Final*

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<sup>1</sup> PRI and Baker McKenzie, "Recommendations of Task Force on Climate-related Financial Disclosures—review of local relevance: Canada," 2017, at page 5: see [online](#)

<sup>2</sup> Canada, Environment and Climate Change Canada, *Final Report on the Expert Panel on Sustainable Finance: Mobilizing Finance for Sustainable Growth*, Ottawa: 2019, Recommendation 6.3, page 21: see [online](#)

<sup>3</sup> FSCO Investment Guidance Notes, *Environmental, Social and Governance (ESG) Factors (IGN-004)*, January 1, 2016: see [online](#)

*Report of the Expert Panel on Sustainable Finance.*<sup>4</sup> It would also align OSFI's guidance with the United Kingdom where regulatory amendments in 2019 clarified that ESG factors, including those associated with climate change, are financially material considerations for the purpose of pension plan investment.<sup>5</sup> The CBA Section believes that robust guidance on ESG factors would encourage other Canadian jurisdictions to do the same.

**Question 10: Where investment decisions are delegated to an investment manager should climate-related risks be considered when selecting a manager?**

A plan administrator has a fiduciary standard of care when selecting and monitoring investment managers. Assessing their investment policies and other material statements on climate-related risks is one of many factors that should be considered when choosing an investment manager and must be assessed on a case-by-case basis. For example, climate-related risks would not be a relevant criterion in the selection of an indexed manager or fund.

**Question 16: What factors should OSFI consider in designing its guidance, supervision process and reporting requirements to promote FRPP preparedness and resilience to climate-related risks?**

OSFI should consider the following key factors:

1. Plan administrators owe fiduciary duties to the plan beneficiaries. Preparedness for and resilience to risks, including climate-related risks, are key elements of these duties.
2. A principles-based approach may better recognize the non-homogeneity in pension plans. There is a great variety in pension plans, in terms of size and available expertise and resources. A principles-based approach, rather than a prescriptive regulatory approach, may be more reflective of this non-homogeneity and better assist pension plan administrators in effectively responding to climate-related risks, without unduly fettering the fiduciary discretion vested in pension plan administrators.
3. Many pension plans are multi-jurisdictional. Consistent with the CBA Section's promotion of harmonization in pension regulation across Canadian jurisdictions, federal policies and guidance should consider existing policies and guidance issued by other pension regulators, and where possible and appropriate, adopt similar approaches.

The CBA Section appreciates the opportunity to comment on OSFI's discussion paper. We trust our comments are helpful and would be pleased to offer further details if necessary.

Yours truly,

*(original letter signed by Marc-Andre O'Rourke for Jeff Sommers)*

Jeff Sommers  
Chair, CBA Pensions and Benefits Law Section

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<sup>4</sup> *Supra*, note 2, Recommendation 6, page 20.

<sup>5</sup> Amendments to the Occupational Pension Schemes (Investment) Regulations 2005, UK Statutory Instruments 2018, No. 988, Regulation 4: see [online](#)