A COMPLAINT TO THE ONTARIO SECURITIES COMMISSION AND THE AUTORITÉ DES MARCHÉS FINANCIERS OF QUÉBEC

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PART 1 - SUMMARY

1. This complaint is submitted jointly to the Ontario Securities Commission and to the Autorité des marchés financiers of Québec pertaining to the market activities of BMO, Scotiabank, CIBC, TD, and RBC.

2. Securities regulators in Canada have been clear that ESG-related disclosure by market participants is subject to the same standards of accurate and complete disclosure as financial disclosures.

3. Moreover, securities regulators have issued specific guidance related to environmental and climate disclosure, as well as ESG-related retail funds.

4. The banks in this complaint have each established that climate change poses significant risks to their business and have responded with net zero commitments and programs.

5. Each cites “sustainable finance” or some similarly worded initiative as a core part of their net zero response and has set a target for this business segment in the hundreds of billions of dollars, implying to a reasonable investor that they are mounting a serious response to the business risk.

6. Yet, there is no necessary relationship between this business segment and net zero, since there are no quantitative standards for associated instruments, no disclosure of emissions impact, and examples of sustainable finance deals that actually increase emissions. Greenwashing in the segment is widely acknowledged.

7. Bank equity holders are at risk given the banks’ admission of significant climate risk to their business, requiring a credible response, with sustainable finance explicitly put in the window as a major part of that response.

8. A part of sustainable finance is ESG-labeled bonds, and current or prospective labeled bondholders are also at risk given inadequate or misleading disclosure associated with these instruments.

9. The complainant therefore requests: that the Ontario Securities Commission and the Autorité des marchés financiers of Québec launch an investigation into the sustainable finance disclosures of the banks; that if this complaint is supported that the banks be required to either disclose emissions impact for the segment or else disclose the limitations of sustainable finance to their net zero goals; and that the regulators join with others to issue guidance for ESG-labeled bonds.

PART 2 - BACKGROUND

A. THE REPORTING ISSUERS AND REGULATORS

10. This complaint is submitted jointly to the Ontario Securities Commission (OSC) and to the Autorité des marchés financiers (AMF) of Québec. This is because it pertains to the market activities of the following registered reporting issuers whose principal jurisdictions are Ontario and Québec. Ontario is the principal securities jurisdiction for:

- Bank of Montreal / Banque de Montréal, profile number 000002530 (BMO)
- The Bank of Nova Scotia / La Banque de Nouvelle – Écosse, profile number 000001289 (Scotiabank)
- Canadian Imperial Bank of Commerce / Banque Canadienne Imperiale de Commerce, profile number 000002543 (CIBC)
- The Toronto-Dominion Bank / La Banque Toronto-Dominion, profile number 000001369 (TD)

Québec is the principal securities jurisdiction for:

- Royal Bank of Canada / Banque Royale du Canada, profile number 000001161 (RBC)

(altogether referred to as the Banks).[1]

11. The OSC and AMF coordinate and harmonize their work, along with other provincial securities regulators, via the Canadian Securities Administrators (CSA).

12. The CSA issues periodic staff notices on specific issues as part of this coordination and harmonization process.

B. THE COMPLAINANT

13. The complainant operates as “Investors for Paris Compliance” (I4PC), which is a project of the Salal Foundation, a registered Canadian charity.

14. I4PC is a shareholder advocacy organization with a mission to hold Canadian publicly-listed companies accountable to their net zero commitments.

15. I4PC does this via in-depth analysis, engagement with companies, and filing shareholder proposals. For the past two years, I4PC has published a report card on the net zero progress of the banks and directly engaged the banks themselves.[2]

16. Via Salal, I4PC is a shareholder in each of the five banks of this complaint.

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[1] National Bank was not included in this complaint since, while the bank does engage in sustainable finance like the other banks, it does not as strongly link its sustainable finance activities with its net zero commitment, including the setting of a financial target for the segment.
[2] Investors for Paris Compliance, Banks 2022 Net Zero Report Card, (November, 2022) and Banks 2023 Net Zero Report Card, (July 2023).

C. LEGISLATION AND GUIDANCE

17. Both the *Ontario Securities Act* (S.126.2) and the *Québec Securities Act* (S.197) prohibit misleading or untrue statements, including omission of relevant facts.

18. CSA guidance has established that these provisions apply equally to ESG-related disclosures. In 2010 the CSA issued *Staff Notice 51-333 Environmental Reporting Guidance*[3] in recognition of the emerging materiality of environmental issues. It states,

    > "Information relating to environmental matters is likely material if a reasonable investor's decision whether or not to buy, sell or hold securities of the issuer would likely be influenced or changed if the information was omitted or misstated."

19. In 2019 the CSA elaborated on climate-related issues with the publication of *Staff Notice 51-358 Reporting of Climate Change-related Risks*.[4] While the staff notice fleshes out the concepts of physical and transition risks, it also underlines that such disclosures carry the same obligations of accuracy and completeness as financial disclosure:

    > "Securities legislation also contains general prohibitions against making statements that a person or company knows (or reasonably ought to know) are materially misleading or untrue. Misrepresentations in a continuous disclosure document also include an omission to state a material fact that is required to be stated or is necessary to be stated in order for that statement not to be misleading."

20. Early in 2022 the CSA issued *Staff Notice 81-334 ESG-related Investment Fund Disclosure*.[5] While this relates to the retail investing side rather than the corporate financing that is the subject of this complaint, it nevertheless recognizes several important and related principles.

21. For example, *Staff Notice 81-334* recognizes the growing relevance of "greenwashing:"

    > "As the investment fund industry has responded to investor demand by creating new ESG-Related Funds and incorporating ESG considerations into existing funds, there has been an increased potential for "greenwashing", whereby a

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[3] Canadian Securities Administrators, *Staff Notice 51-333, Environmental Reporting Guidance*, (October 2010).
[4] Canadian Securities Administrators, *Staff Notice 51-358, Reporting of Climate Change-Related Risks*, (August 2019).
[5] Canadian Securities Administrators, *Staff Notice 81-334, ESG-Related Investment Fund Disclosure*, (January 2022).

fund's disclosure or marketing intentionally or inadvertently misleads investors about the ESG-related aspects of the fund."

22. *Staff Notice 81-334* emphasizes the importance of nomenclature:

> "A fund's name and investment objectives should therefore accurately reflect the primary focus of the fund. To prevent greenwashing, it is important that the name and investment objectives of a fund accurately reflect the extent to which the fund is focused on ESG, where applicable, including the particular aspect(s) of ESG that the fund is focused on."

23. *Staff Notice 81-334* notes when ESG-related funds relate to measurable outcomes, they should clearly state the intended outcome, and relates this specifically to climate change:

> "For example, staff encourage funds that aim to reduce carbon emissions to disclose a measurable carbon emissions reduction target in their investment objectives. The inclusion of a measurable ESG outcome in a fund's investment objectives would also allow funds to provide meaningful continuous disclosure that reports on whether the fund is achieving its intended ESG outcome."

24. *Staff Notice 81-334* goes on to ask for full disclosure of the content of ESG-related funds, including whether they hold investments that could be perceived to be inconsistent with such funds:

> "To provide greater clarity to investors and in line with the principle of full, true and plain disclosure of all material facts, staff's view is that an ESG Fund should disclose whether it may, at any point in time, hold such investments, what those holdings would include (including examples), and how such holdings meet the fund's investment objectives."

25. Finally, *Staff Notice 81-334* also deals with conflicts of interest, where fund promoters are not the best source of objective information regarding ESG performance due to their financial interest. To remedy this, it states:

> "To address conflicts of interest, staff's view is that the fund-level ESG rating, ranking or score that is included in the sales communication should be prepared by a provider that:
> (a) rates, scores or ranks the ESG characteristics or performance of the fund through an objective methodology that is (i) applied consistently to all funds rated, scored or ranked by it, and (ii) disclosed on the provider's website;
> (b) is not a member of the organization of the fund;[42] and
> (c) is not paid to assign a fund-level ESG rating, score or ranking to the fund by the promoter, manager, portfolio adviser, principal distributor or participating dealer of any fund or any of their affiliates."

26. Later in 2022, the CSA issued *Staff Notice 51-364*[6] reviewing continuous disclosure issues for the prior years. One of the issues it flags is "overly promotional disclosure" related to greenwashing. It states,

> "We have observed an increase in issuers making potentially misleading, unsubstantiated or otherwise incomplete claims about business operations or the sustainability of a product or service being offered, conveying a false impression commonly referred to as "greenwashing"."

27. In sum, these CSA staff notices have established that:

- Environmental disclosure can be material;
- Such disclosure is subject to the same standards of veracity and completeness as financial disclosure;
- Contrary to these standards, greenwashing is a growing trend;
- Nomenclature in ESG disclosure matters, as does quantification where appropriate, and full and accurate disclosure of the strategies and choices employed; and
- Conflicts of interest can contribute to greenwashing and should be mitigated.

PART 3 - FACTS

A. BANK CLIMATE DISCLOSURES AND SUSTAINABLE FINANCE

28. In October 2021, the banks collectively joined the Net Zero Banking Alliance (NZBA), committing each to the goal of reaching net zero in its financed emissions by 2050. Their joint press release said that, "Each institution has taken steps to partner with clients to reduce carbon emissions, invest in renewable energy projects and support *sustainable financing*."[7] (Emphasis added).

29. In prior and subsequent disclosures, each bank acknowledges that climate change poses or may pose significant risks to its business. For example:

- In its 2021 Annual Report, BMO states it

[6] Canadian Securities Administrators, *Staff Notice 51-364, Continuous Disclosure Review Program Activities*
for the fiscal years ended March 31, 2022 and March 31, (November 2022).
[7] BMO Financial Group, Six of Canada's Largest Banks Join United-Nations-Convened Net-Zero Banking Alliance, (October 15, 2021).

> "...faces risks related to environmental events and extreme weather conditions that could potentially disrupt our operations, impact customers and counterparties, and result in lower earnings and higher losses."[8]

- In its 2022 Annual Report, Scotiabank states

> "The Bank considers Environmental Risk to be the potential adverse impacts to a business due to the loss of, or damage to the natural environment and/or biodiversity, such as land, water, plants, animals, natural resources, ecosystems, and the atmosphere. The Bank considers the physical and transition risks associated with climate change to be a component of Environmental Risk."[9]

- In its 2022 Annual Report, CIBC states

> "We are actively identifying and assessing climate-related risks and how they might impact business operations, cause physical damage, disrupt supply chains and affect global economies, and ultimately impact credit and market risk."[10]

- In its 2021 Annual Report, RBC states

> "We may be exposed to climate risk through emerging regulatory and legal requirements, disruptions to our operations and services, and the products and services we provide to our clients. Both we and our clients may also be exposed to climate risk through technological and societal change and market forces, in addition to the factors outlined above. Additionally, we and our clients may also be vulnerable to physical climate risk."[11]

- In its 2022 Annual Report, TD states that

> "Climate risk is the risk of reputational damage and/or financial loss arising from materialized credit, market, operational or other risks resulting from the physical and transition risks of climate change to the Bank, its clients or the communities the Bank operates in."[12]

30. As a response to these risks, conditions for banks joining the NZBA include disclosure of financed emissions, setting of 2030 targets, and aligning lending and investment portfolios with net zero by 2050 or sooner.[13]

31. Each of the banks in this complaint claims to be advancing towards these conditions, as disclosed in their annual reports and in their ESG or climate reports.

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[8] BMO Financial Group, 2021 Annual Report to Shareholders, (Spring 2022) at 75.
[9] Scotiabank, 2022 Annual Report, (Spring 2023) at 107.
[10] CIBC, 2022 Annual Report, (Spring 2023) at 84.
[11] Royal Bank of Canada, Annual Report 2021, (Spring 2022) at 99.
[12] TD, 2022 Annual Report, (Spring 2023) at 113.
[13] Net Zero Banking Alliance, Commitment Statement, n.d.

32. The banks in this complaint take a range of approaches to measuring and disclosing financed emissions, setting interim targets, and articulating transition activities for a pathway to net zero by 2050. But common to each is that they prominently include "sustainable finance" or some similar label as a major part of that plan or pathway.

33. For example:

- In BMO's 2021 Annual Report under the heading of "Net-Zero Ambition", the bank states that, "Our bold commitment to a sustainable future is embedded in our Purpose, and we are delivering on that commitment through the BMO Climate Institute and such initiatives as our sustainable finance strategy."[14] BMO's 2021 and 2022 climate reports both report on "sustainable finance" metrics under the heading of "strategy."[15]

- Scotiabank's 2022 Net Zero Pathways Report [16] identifies sustainable finance as one of its "levers" to achieve net zero emissions, and its 2022 Annual Report under the heading of "Our Climate Commitments: Net-Zero Emissions by 2050" leads off with its 2022 highlights by talking about its increased sustainable finance target.[17]

- In its 2021 Annual Report, CIBC states, "In 2021, we announced our ambition to achieve net-zero greenhouse gas (GHG) emissions from our operations and financing activities by 2050. As part of this goal and as a leader in financing renewable energy initiatives, we also doubled our commitment to mobilizing sustainable finance to a target of $300 billion by 2030 as we play a role in accelerating the transition to a lower-carbon economy."[18] CIBC's 2022 climate report confirms that sustainable finance is part of its net zero "implementation plan".[19]

- TD's 2022 Climate Action Plan under "implementation strategy" talks about replacing its "low carbon" financing target with a larger "sustainable & decarbonization finance" target,[20] and also includes meeting its "low carbon" financing target as one of its key accomplishments.[21]

- RBC's Climate Blueprint[22] lists its sustainable financing target as the first action of its first strategic priority. Under the heading of "Our Net Zero Roadmap," RBC's 2022 climate report lists its sustainable finance activities as its first accomplishment.[23]

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[14] BMO Financial Group, 2021 Annual Report to Shareholders, (Spring 2022) at 12.
[15] BMO Financial Group, 2021 Climate Report, Spring 2022 and 2022 Climate Report, (Spring 2023).
[16] Scotiabank, Net Zero Pathways Report, (Spring 2022).
[17] Scotiabank, 2022 Annual Report, (Spring 2023) at 14.
[18] CIBC, 2021 Annual Report, (Spring 2022) at 5.
[19] CIBC, 2022 Climate Report, (Spring 2023) at 15.
[20] TD, 2022 TD's Climate Action Plan, (Spring 2023) at 20.
[21] Ibid at 39.
[22] RBC, Climate Blueprint, (original version 2019, updated annually).
[23] RBC, Climate Report 2022, (Spring 2023) at 7.

34. To reiterate, each of the banks explicitly includes their sustainable finance activities as a core way in which they are meeting their net zero targets.

B. SUSTAINABLE FINANCE DISCLOSURES

a. Global Voluntary Process Guidelines

35. As described by the banks, "sustainable finance" is a range of products and services offered to their commercial clients, that include but are not limited to: green bonds, green loans, social bonds, social loans, sustainable bonds, transition bonds, sustainability-linked bonds, and sustainability-linked loans.

36. While these instruments are ultimately contracts between banks and their clients, their shape is influenced via voluntary process guidelines issued by bodies like the Loan Market Association[24] and the International Capital Markets Association.[25]

37. Green and social loans, as well as green, social, and sustainable bonds are characterized by "use of proceeds" guidelines whereby financing is directed to a list of eligible activities.

38. Sustainability-linked loans and bonds, on the other hand, are characterized by financial performance penalties (or bonuses) based on failure (or achievement) in meeting agreed upon key performance indicators (KPIs). The resulting financing is not confined to meeting the KPIs and can be used for general corporate purposes.

39. The voluntary process guidelines for these products are characterized as principles rather than requirements.

40. The details of such loans are confidential unless the bank and client choose to disclose them. The details of related bonds are more transparent given the need for a client to publish a prospectus.

b. Bank sustainable finance targets and disclosures

41. Each of the banks named in this complaint has set a financial target associated with its sustainable finance activity, although there are variations in how this activity is worded. For example:

    - BMO uses the term "sustainable finance" and has set a financial target of mobilizing "$300 billion in capital to support companies pursuing sustainable outcomes by 2025."[26]

[24] Loan Market Association, Sustainable Lending Resources, n.d.
[25] International Capital Markets Association, The Principles, Guidelines and Handbooks, n.d.
[26] BMO Financial Group, 2022 Climate Report, (Spring 2023) at 22.

- Scotiabank uses the term “climate-related finance” and has set a financial target for this business segment of $350 billion by 2030.[27]

- CIBC uses the term “sustainable finance” and has set a financial target of “mobilizing $300 billion in capital [by 2030] and developing innovative market-based solutions to support our clients, including green bonds, sustainability-linked loans and other sustainable investment solutions that meet our clients needs for sustainable finance products.”[28]

- TD has set a $500 billion by 2030 target for what it calls “Sustainable & Decarbonization Finance”.[29]

- RBC uses the term “sustainable finance,” and has set a financial target of $500 billion by 2025 for this business segment.[30]

42. Collectively across the five banks, this amounts to a total of almost $2 trillion by 2030. We here use the term “sustainable finance” to characterize these initiatives.

43. Each of the banks follows the voluntary process guidelines for sustainable finance instruments, and RBC,[31] TD,[32] and Scotiabank[33] have disclosed frameworks to further describe their approach. RBC and Scotiabank add some exclusions not related to climate, such as weapons and gambling, while also stating that their overall policy guidelines for sensitive sectors like coal and Arctic exploration apply equally to their sustainable finance segment. TD states that it will only count decarbonization activities towards its target if the client has a 2050 net zero target, interim targets, and transition planning and climate disclosure.

44. Each of the banks discloses aggregate progress towards its sustainable finance target in financial terms in its annual reporting, sometimes broken out by instrument type (eg. reporting on the amount of sustainability-linked loans). The banks also disclose details regarding a handful of their sustainable finance deals.

PART 4 - SUBMISSIONS

45. The banks’ sustainable finance suffers from the same set of issues that *Staff Notice 81-334* seeks to correct with regards to ESG-related retail funds, namely misleading nomenclature, vague strategy, lack of impact measurement, and conflict of interest.

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[27] Scotiabank, 2022 ESG Report, (Spring 2023) at 48.
[28] CIBC, 2022 Climate Report, (Spring 2023) at 15.
[29] TD, 2022 TD’s Climate Action Plan, (Spring 2023) at 51.
[30] RBC, Climate Blueprint, (original version 2019, updated annually), at 2.
[31] RBC, Sustainable Finance Framework, (October 2022).
[32] TD, TD Sustainable & Decarbonization Finance Target Methodology, (March 2023).
[33] Scotiabank, Scotiabank Climate-Related Finance Framework, (October 2023).

46. Whereas *Staff Notice 81-334* seeks to protect retail investors, in this case it is bank equity holders who are at risk since the banks position sustainable finance as a core part of their efforts to address the climate-related business risk that they themselves acknowledge.

47. An additional set of market participants at risk from misleading or incomplete disclosure related to sustainable finance are labeled bondholders – current or prospective holders of green, social, sustainable, or sustainability-linked bonds.

A. BANK DISCLOSURES CONNECTING SUSTAINABLE FINANCE WITH NET ZERO ARE MISLEADING TO EQUITY HOLDERS.

a. There are no quantitative standards, and no measurement of outcomes

48. The banks claim that sustainable finance is a core part of how they will reach net zero, yet none of them discloses the emissions impacts of this business segment. There are no specific emissions targets for sustainable finance and the banks make no distinction between the financed emissions of their sustainable finance portfolio versus their regular portfolio.

49. This is in part due to the weakness of the voluntary process guidelines that shape sustainable finance instruments. Because they are process guidelines framed as principles, there are no quantitative standards that bind the instruments.

50. While “use of proceeds” instruments like green or social loans and bonds apply financing to a list of qualifying green activities, there is no requirement that such activities be additional over business as usual; it is fine that they are incidentally green and result in no difference in emissions outcomes. This is underlined by the lack of emissions reporting for these instruments. Moreover, it is also permissible for a ‘brown’ company that may be increasing its overall emissions to receive such financing for a qualifying ‘green’ activity in its portfolio, thereby improving its financial position and ability to expand emissions. (See the Grupo Aeroportuario del Pacifico green bond example below).

51. For “sustainability-linked” instruments, there is no obligation to tie emissions-related KPIs to climate science, or even to absolute emissions reductions. As a result, banks and their clients often choose intensity-based KPIs that allow absolute emissions to rise, as seen in multiple examples below, with no obligation to disclose this misleading result.

52. The banks in this complaint could choose to treat the voluntary process guidelines as a floor and add their own quantitative standards based in science or even based on their own interim climate targets, but instead treat them as a ceiling and add no such standards. In its framework, TD is the only bank that appears to do more than the minimum in restricting its “decarbonization” financing to clients who have targets and

transition planning, but does not specify that these need to meet any minimum standards or be credible, which is a fatal shortcoming given that many corporate net zero programs are judged to be seriously wanting.[34]

53. Because the banks' financial targets for this segment are so large – in the hundreds of billions – the impression created for the reasonable investor is that this will have a significant impact on the banks' net zero transition, when there is in fact no disclosure that sustainable finance has different overall emissions outcomes than regular finance.

54. There are other more credible examples of financing being used to reduce emissions, with financial institutions measuring and disclosing these climate impacts, such as the CDPQ's climate transition envelope.[35]

b. There are examples of sustainable finance deals that increase emissions

55. There are several examples where sustainable finance deals done by the banks have helped increase rather than decrease emissions, underlining the systemic problem with disclosing this business segment as a contributor to bank net zero transition.

56. Note that the examples below are derived from the small number of deals for which there is some disclosure – the vast majority of sustainable finance deals are not public.

57. In February 2021 RBC[36] and CIBC[37] were sustainability structuring agents on a $1 billion syndicated sustainability-linked loan to Enbridge at the time when the latter was expanding fossil fuel infrastructure, including finishing the Line 3 oil sands expansion pipeline, estimated to have the same impact on the climate as adding 50 new coal-fired power plants.[38]

58. Later in 2021, Scotiabank acted as sole structuring advisor and joint bookrunner on a $1.1 billion sustainability-linked bond for Enbridge,[39] with the same impacts. The bond framework released by Enbridge showed how the bank and company agreed on the use of intensity-based targets for Enbridge's scope 1 and 2 emissions, thereby rationalizing the bond, even though the company's scope 3 emissions were rising dramatically.[40] This misleading use of intensity metrics is common to several of these examples.

59. In 2021 BMO was the sustainability structuring lead on a principal syndicated revolving credit facility converted to a sustainability-linked revolving credit facility for Gibson

[34] See for example: Associated Press, More companies setting 'net-zero' climate targets, but few have credible plans, report says, (June 11, 2023).
[35] CDPQ, Our actions to accelerate the transition, n.d.
[36] RBC, Our Commitment to Sustainable Finance, n.d.
[37] CIBC, Sustainability Report 2021, (Spring 2022) at 26.
[38] Minnesota Environmental Partnership et al, A Giant Step Backward, n.d.
[39] Scotiabank, 2021 Environment, Social and Governance (ESG) Report, (Spring 2022) at 30.
[40] Enbridge, Sustainability-Linked Bond Framework, (June 2021).

Energy.[41] Gibson is an oil infrastructure company which at the time was expanding its exposure to oil.[42] It has since gone onto do so dramatically,[43] while its sustainability planning does not measure its scope 3 emissions nor set any targets for them.[44]

60. In 2021 BMO[45] and CIBC[46] were sustainability structuring agents for a $4 billion sustainability-linked loan to Teck, which at the time was doubling its bitumen production[47] and expanding its coal terminal in North Vancouver to double shipments.[48] Note while at the time Teck stated a “priority” to achieve net zero in scope 3 emissions by 2050, it also stated that there wasn’t yet a pathway for this for its metallurgical coal business for which it measured rising scope 3 emissions, while the company did not even measure scope 3 emissions for its bitumen production, let alone set a target for this segment.[49]

61. In 2021 TD served as a co-sustainability structuring agent for a US $4 billion sustainability-linked loan with Occidental Petroleum, a major oil and gas producer.[50] The KPIs included absolute reductions in scope 1 and 2 emissions, but Occidental is increasing its fossil fuel reserves year-over-year,[51] and its 2022 capital plan showed a significant increase in its oil and gas expenditures, which would be 8-17 times its “net zero pathway” expenditures.[52] Late in 2023 Occidental announced it was expanding its fossil fuel business by purchasing oil driller CrownRock.[53]

62. In 2021 Scotiabank acted as sole green structuring advisor and joint bookrunner for a green bond for Grupo Aeroportuario del Pacifico,[54] and followed this up in 2022 as sole sustainability structuring agent and joint bookrunner for a sustainability-linked bond tied to reducing absolute scope 1 and 2 emissions.[55] But, the airport company is banking on a 60% growth in airline seat capacity growth by 2027,[56] thereby more than doubling scope 3 emissions.

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[41] BMO Financial Group, 2021 Sustainability Report, (Spring 2022) at 39.
[42] Gibson Energy, Gibson Energy Announces New Tankage at Edmonton Terminal, (August 3, 2021).
[43] Gibson Energy, Gibson Energy Acquires Texas Gulf Coast Oil Export Facility, n.d.
[44] Gibson Energy, 2022 Sustainability Update Report,(September 2023).
[45] BMO Financial Group, 2021 Sustainability Report, (Spring 2022) at 39.
[46] CIBC, Sustainability Report 2021, (March 2022) at 26.
[47] Teck, 2021 Annual Report, (Spring 2022) at 11.
[48] North Shore News, North Vancouver’s Neptune Terminal plans massive upgrade, (February 26, 2020).
[49] Teck, 2021 Sustainability Report, (Spring 2022) at 25-28.
[50] TD, 2022 TD’s Climate Action Plan, (Spring 2023) at 22.
[51] Occidental Petroleum, 2022 Annual Report, (Spring 2023) at 7.
[52] Occidental Petroleum, Fourth Quarter Earnings Conference Call, (February 2022) at 9.
[53] Bloomberg, Occidental to Buy Oil Driller CrownRock for $10.8 Billion, (December 11, 2023).
[54] Scotiabank, 2021 Environment, Social and Governance (ESG) Report, (Spring 2022) at 30.
[55] Scotiabank, 2022 ESG Report, (Spring 2023) at 39.
[56] Grupo Aeroportuario del Pacifico, Corporate Presentation, (Second Quarter 2023) at 9.

63. In 2022 Scotiabank acted as joint bookrunner for Georgia Power's US$800-million Sustainability Bond.[57] The company recently filed with Georgia state regulators to expand its fossil fuel burning.[58]

64. In 2022 RBC and National Bank acted as joint bookrunners and structuring advisors for Tamarack Energy's $200 million sustainability-linked bond issuance,[59] a portion of proceeds of which were used to acquire another oil and gas company,[60] thereby expanding production and raising scope 3 emissions. This was followed by a further $100 million sustainability-linked issuance to help buy yet another oil and gas company,[61] raising emissions even further.

65. These examples point to the absence of clear standards for sustainable finance, particularly with regards to climate change where emissions growth makes the crisis worse not better. And, each of these deals would raise the participating banks own financed emissions – which account for scope 3 emissions – thereby taking them further away from their own net zero commitments rather than helping.

66. Note that these examples in themselves are instances of misleading disclosure, since they were voluntarily given by the banks to serve to support their sustainable finance activity, but none were accompanied by the relevant information that would allow a reasonable investor to judge their true impact on emissions.

c. Recognition of greenwashing in this business segment is widespread

67. These shortcomings have led to a widespread impression of greenwashing in the sustainable finance segment.

68. Multiple media stories have raised the alarm about greenwashing in the sustainable finance segment, whether at a systemic level,[62] or at the project level.[63]

69. Regulators have started to weigh in. In June 2023 the UK Financial Conduct Authority published a letter[64] outlining its concerns regarding sustainability-linked loans (SLLs)

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[57] Scotiabank, 2022 ESG Report, (Spring 2023) at 39.
[58] The Atlanta Journal-Constitution, As climate warms, Georgia Power seeks to add more fossil fuels, (October 27, 2023).
[59] Tamarack Valley Energy, Tamarack Valley Energy Announces Issuance and Pricing of $200 Million Senior Unsecured Sustainability-Linked Notes, (February 2, 2022).
[60] Tamarack Valley Energy, Tamarack Valley Energy Announced Closing of First Sustainability-Linked Note Issuance in the North American Oil & Gas Producer Space, (February 10, 2022).
[61] Tamarack Valley Energy, Tamarack Valley Energy Announced Issuance and Pricing of Upsized $100 Million 7.25% Senior Unsecured Sustainability-Linked Notes due 2027, (September 12, 2022).
[62] Bloomberg, Empty ESG Pledges Ensure Bonds Benefit Companies, Not the Planet, (October 3, 2022).
[63] See for example Finance Asia, Sustainable Finance Asia Forum highlights: When aviation players tap the green bond space, (April 25, 2023), or Toronto Star, Canadian banks are loaning Enbridge over $1B with questionable sustainability requirements, (September 27, 2021).
[64] UK Financial Conduct Authority, Sustainability-Linked Loan letter, (June 29, 2023).

based on a survey of the market, noting, "increasing and sometimes negative media coverage of the SLL market." It's findings included:

- "One firm considered that, of 250 SLL transactions completed in 2022, only 30% were deemed 'fit for purpose', and that in 50% of cases, KPIs were not robust."
- "We also noted a general sentiment among banks that the 'relationship' may matter more than the borrower's sustainability credentials – the former may therefore disproportionately drive the bank's decision to participate in the loan."
- "Stakeholders observed that a number of banks seem keen to promote SLLs – in some cases additionally incentivised by remuneration linked to achieving ESG financing targets. This may give rise to a potential conflict of interest, encouraging the bank to accept weak SPTs [sustainability performance targets] and KPIs."

70. Note that the UK Financial Conduct Authority's comments on conflict of interest echo *Staff Notice 81-334* regarding ESG-themed investment funds. In the case of sustainable finance, this is a profit centre for the Canadian banks, and they have not disclosed whether staff remuneration is tied to meeting the financial targets they have set for the business segment, which would further incentivize a conflict of interest even beyond the desire of the bank to maintain the 'relationship' with the client.

71. Some investors have also gone public with their concerns regarding the "sustainability-linked" instruments. In its 2022 Annual Report, the British Columbia Investment Management Association states, "We disagree with the systemic characterization of sustainability-linked financing as sustainable finance by the underwriting community."[65]

72. Recently, it was reported that bankers have begun adding "declassification" clauses in SLLs to retroactively deem them 'normal' loans should the product not actually merit a green label, because, "[l]awyers advising SLL bankers say the reputational risks associated with mislabeling such products are now too big to ignore."[66]

B. LABELED BOND MARKET PARTICIPANTS ARE ALSO BEING MISLED BY INACCURATE OR INCOMPLETE DISCLOSURE.

73. While this complaint focuses mainly on the implications for bank equity holders, another set of impacted market participants are current or prospective labeled bond holders.

[65] BCI, 2022 ESG Annual Report, (Spring 2023) at 33.
[66] Bloomberg, Bankers Seek Legal Cover After Backing $1.5 Trillion of ESG Debt, (November 5, 2023).

74. Many institutional investors have adopted a net zero goal to reduce their financed emissions. This requires them to shift their portfolios into lower carbon assets and/or promote the decarbonization of existing assets.

75. Labeled bonds – green, social, sustainable, or sustainability-linked – may be perceived to be aligned with an investor’s net zero goals, but there is currently no obligation to report the overall financed emissions associated with these bonds.

76. Worse, as the Enbridge and Tamarack Valley Energy examples above show, there are instances where labeled bonds are portrayed as achieving emissions reductions when in fact the opposite is true. An investor purchasing these bonds would see a rise in their overall financed emissions based on accurate accounting.

PART 5 - REMEDY SOUGHT

77. In summary:

    - The banks have admitted that climate change presents a significant risk to their business.
    - As a result, each has made a net zero by 2050 commitment, including for their financed emissions.
    - Each has claimed “sustainable finance” or some similar label is a major part of meeting their net zero commitment and has set a financial target for the segment in the hundreds of billions of dollars, which would lead a reasonable investor to conclude they are taking serious steps to reduce their financed emissions.
    - Yet, deals done in the segment are subject only to voluntary process guidelines, with no quantitative standards grounded in climate science, evidenced by the existence of several deals that increase rather than decrease emissions.
    - The banks do not attempt to measure the climate impact of the segment; there is no distinction between their sustainable finance portfolio and their regular portfolio. There is therefore no necessary relationship between the segment and their climate targets.
    - There is greenwashing both at the deal level with the examples cited above, and at the structural level given that “sustainable finance” is claimed as an overall net zero solution.

78. The CSA has already taken a position on a similar set of issues on the retail side with *Staff Notice 81-334*. There are several parallels, with the key difference being which market participants are at risk. In this case, it is primarily existing and prospective bank equity holders who are at risk. The banks have admitted that climate change is a significant risk to their business – the accuracy and completeness of their response is therefore directly relevant to their equity holders.

79. This is a chronic problem across the banks rather than an isolated incident. The complainant has noted the problems with the sustainable finance segment in its annual bank reports, and has made direct representations to the banks, without result. A regulatory intervention is required to ensure accurate and complete disclosure.

80. Another set of market participants requiring protection are those participating in the labeled bond market – for example, green bonds, sustainable bonds. or sustainability-linked bonds – that the banks help create with their sustainable finance activities.

81. We therefore request the following remedies from the OSC and the AMF:

   - An investigation be launched into the sustainable finance (or similarly worded) disclosures of the five banks in this complaint to assess the accuracy and adequacy of their disclosures.
   - If the regulators largely agree with the analysis in this complaint, that the banks be required to:
     - Either disclose the emissions impacts of their sustainable finance business segments and how this relates to their emissions targets, or else clearly disclose the limitations of the segments in that they don't specifically advance their net zero goals.
     - Disclose the absolute emissions impacts of specific sustainable finance deals that are used as examples in climate and ESG reports.
   - That the OSC and AMF work with the CSA to develop specific guidance for labeled bonds, including the need to disclose potential impacts on the absolute emissions (including scope 3) of the issuer.