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ESG CHALLENGES AND OPPORTUNITIES IN NORTH AMERICAN SUPPLY CHAINS: HUMAN RIGHTS, FINANCIAL AND NATURAL RESOURCE SECTOR DIMENSIONS

Mr. STEPHEN PETRAS: Okay, everyone if you could take your seats. Alright, so we're now here for our fourth panel on the ESG environment, social governance challenges and opportunities in North American supply chain, human rights, financial and natural resource sector dimensions. And we're honored to have as the moderator of this panel Selma Lussenberg. Selma serves as a director of MAG Silver Corp, Ontario Power Generation and Muskoka Airport and, of course, is a member of our executive committee. Most recently Selma was the Vice-President of Governance, Corporate Safety and Security, General Counsel and Corporate Secretary at the Greater Toronto Airports Authority. Ms. Lussenberg served as General Counsel Corporate Secretary for the Ontario Municipal Retirement system and AT&T Enterprises Canada. Prior to these, she practiced corporate law, commercial law and trade law at major law firms in both Canada and Australia. She is the Canadian representative on the NAFTA 2022 Committee on Resolution of private commercial disputes. She holds a Bachelor of Law and a Master's in Globalization and International Development from the University of Ottawa and an LLM in International Trade and Business from the Australian National University so over to you Selma.

Ms. SELMA LUSSENBURG: Thank you and welcome. I am very mindful that this is the last Council, after a long day and on a Friday afternoon, so we're going to try to make this as interesting and engaging as we possibly can, and we appreciate your patience and staying with us for the rest of the afternoon.

In this panel, we are going to talk about the increasing importance of environmental, social and governance matters in the supply chain, and I think it builds very well on the energy panel that we had just before us, because we cannot possibly have an energy transition without looking at the ESG issues.

The focus on ESG has increased substantially over the last couple of years. Larry Fink, many of whom I'm sure you've heard of, the CEO of Blackrock and one of the largest investors worldwide, in his letter to CEOs in 2021, diametrically shifted the discussion, highlighting the impact of climate change and the need and the importance of sustainable investing, the need for successful transition to a net zero the economy which he characterizes as one that must be just equitable and protects people's livelihoods, and that is very much what we're talking about when we're talking about ESG. In that context he focused on the importance of open and transparent disclosure by companies with respect to climate change and its impact on the environment, the impact of a company on its stakeholders, human rights, diversity and inclusion. I think we all know that, increasingly, when we talk about the stakeholders of the company, there's no longer just the investors, it is the communities that they serve, it is the customers and it is their suppliers, so the landscape has changed significantly in the last number of years. Larry Fink has

called these companies to issue sustainability reports which address the long-term plans to improve diversity, equity, and inclusion. and highlighting dependence between environmental and social issues. And that's again sort of just came up at the end of the last panel as an area, and I guess, I would add that, in my view, what is going to happen in terms of increased demands for disclosure and I think our panelists will have us on this as well. Is that with better disclosure or a requirement to disclose more, companies that did not previously have a strategy on how to get to net zero or how to deal with the environment or climate change are now being forced to address that and to document it, and can be held accountable. And that's very important, and in the long run, I think, a very beneficial impact of the focus on the ESG. In his 2022 letter, letter Larry fink focused on the power of capitalism to create value for businesses to be purpose-driven and making this the foundational the relationship with stakeholders and how an organization deals with ESG is very critical to this.

As the discussion we've seen throughout the day, it has become very clear that business and companies are not islands; they depend on many different actors in the supply chain, very few companies control their whole destiny. And hence, when we talk about ESG, we must look at ESG in the supply chain, in the procurement practices, and in the structures that we depend on within companies. Rating agencies such as ISS, Glass Lewis, now rate companies on their ESG performance. It is anticipated that for publicly traded companies, say on climate, say on sustainability is going to be on the proxy circular. We've already seen that, with respect to equity diversity, and inclusion, there's a requirement to make public disclosure. And there is a movement afoot, which I believe will come into effect in the U.S. in 2023 and apply to certainly dualistic companies, Canada and the U.S., that chairs of governance committees that are publicly traded companies will either have votes withheld or will be voted against if they have not addressed EDI both in terms of their board memberships and also in terms of senior management and companies. And we're seeing this trend, increasingly, I guess the question for those that are involved with publicly traded companies is, where does it end? I've been living at a number of proxy circulars recently, and there are an incredible number of shareholder proposals where people, shareholders or investors, want to have say on something else. Many of these are related to ESG, whether it is the level of compensation between the CEO and the lowest paid employee, whether it is are they auditing their supply chain for human rights violations, how are they dealing with harassment and discrimination in the workforce, the list goes on and on. So, it is a changing landscape, and ESG plays a very important part in that process.

To tackle this discussion today, I'm very fortunate to have four very distinguished and knowledgeable speakers with diverse and extensive experience, and we will address several aspects of ESG and I welcome you to come forward with your questions. The format that we've opted for is no PowerPoint, knowing that it is late on a Friday afternoon, so I've asked each speaker to speak about five to 10 minutes and thereafter, so they'll do them sequentially and they're going to speak in the following order; Jon Drimmer, Reg to my immediate left, Michael

Torrance, and then Professor Fen Hampson. I'll say a little bit about each of them and then I will leave it to you read their bios.

Jonathan Drimmer is a partner at Paul Hastings, and he will start the discussion by looking at how human rights issues have become integral to the supply chain and different legal approaches, including development to resolve law and potentially hard law and regulation.

Reg to my immediate left and I want to thank him for making the time and coming to sit on our panel and be here in person, is the recently minted VP of ESG and external relations at Lapis Energy, which is a new world for him, but he has been deeply involved in ESG for many, many years, and I don't know whether you would consider it a claim to fame, but you cut your teeth on talisman in Africa, which had significant ESG issue issues a number of years ago. So, he's going to speak, as is everyone, from their own personal perspective, but one of the things he's also going to look at is how we move from CSR to ESG; what does that mean, is that all the same thing, and I think that's a debate we're all having is like what is the difference between all these things. At the end of the day, it seems to me it's all about disclosure.

Michael Torrance, who joins us from Toronto, is the Chief Sustainability Officer of the Bank of Montreal, one of Canada's largest financial institutions. It has operations across Canada and in the United States via the Harris bank. Michael will look at the role that financial institutions play in driving responsible ESG practices. Including lending practices, but also other aspects of ESG within the financial services sector.

And last and certainly not least, we are fortunate to have Professor Fen Hampson speak. He is a professor of international affairs at the Norman Patterson school at Carleton University in Ottawa, and he's President of the World refugee and Migration Council. And he will address many of the public policy aspects around climate crisis, ESG, and market regulation. And he's also going to try to stir the pot, so that we have a healthy and lively debate so without further ado, I would like to turn this over to Jonathan Drimmer who will start the discussion, thank you, Jonathan.

Mr. JON DRIMMER: Thank you, thank you for having me and it's nice to see a lot of friendly faces and people I know and work with in the ESG and CSR space for quite some time. So let me start by talking a little bit about what we've seen in the last few years in terms of the migration from soft law norms to hard law norms as it reflects the 'S' within a ESG and, within that, the business and human rights space, more specifically, with an emphasis on the supply chain. And I think, by way of introduction, what I would say is: first and foremost, the growth in business and human rights related legislation hard law requirements, has just been explosive. What we've seen over the last few years - and it goes back to about 2015 where this this growth pattern really originates, before then it was a little bit more ad hoc, a lot more reliance on some soft law principles, but since 2015 it's just expanded exponentially as countries are looking at each other and what others are doing and putting into place their own versions of laws and regulations that they see peter countries but ultimately pursuing, and that includes the United

States, and that includes Canada, from the North American side within that spectrum.

The laws generally can be broken down into three different categories, each one of which impacts value chain activities that we should say, its suppliers, as well as downstream actors, consumers and users just something that's becoming more and more relevant legislatively.

They fall into three categories, the first are transparency and disclosure type law. And modern slavery act laws are a perfect example of that; The UK modern Slavery Act, the Australian Modern Slavery Act. Canada has been actively considering for the last couple of years, a modern slavery act, and I believe something should pass in the near term. And these effectively require companies to disclose what it is they are doing in terms of their activities typically in their supply chain that focus on modern slavery. Whatever you're not doing you never disclose, you don't have to do anything, you just have to disclose what it is you have in place; policies, procedures, training, due diligence processes, the nature of the risk you're facing those kinds of things.

The second kind of law, and this is one that's really been picking up steam recently, and again I do think we may end up seeing, I know that there's a proposal floating in Canada we're definitely seeing a lot of activity in Europe and the EU around this less so in the United States, are mandatory human rights due diligence laws. And these laws require more than just disclosure as part of it, what they really require is that companies effectively have policies and procedures in place around due diligence connected to human rights, typically upstream in their supply chain. But sometimes also downstream in terms of consumers and then users. You have to have policies and procedures in place to address due diligence. Number two, you have to conduct (TECHNOLOGICAL ISSUES) human rights abuses. Number three, you have to put into place mitigating measures that are designed to prevent and reduce the nature of risk and impact associated with what you find. And, and then you have to evaluate the effectiveness of those measures and have processes to evaluate whether the steps you put into place are working and then, finally, you need to a report on all of that, that same disclosure requirements, but that ultimately exists when we think about modern slavery acts. The U.S. version of this, the closest that we would have in the US, would be around conflict minerals which does require a level of due diligence, if you do have any of the three t's: tin, tungsten, tantalum or gold coming from the DRC or a contiguous country. But this is a set of activities, the legislation moving very rapidly again in Europe, we now have laws that have been adopted in Germany and in Norway those go into effect, soon, we have a lot in France that's been in place since 2017. We have a thinner version of the law in Switzerland, we have proposals in the Netherlands proposals in Spain, many other European countries. And most significantly, at an EU level for a draft directive that would require mandatory due diligence throughout anybody doing business in the EU above a certain size and non US companies doing business in the EU, that would effectively again compel human rights due diligence upstream with your supply chain downstream with consumers and users, including the mitigating measures and reporting that we that we talked about, along with a number of other components that are associated with it.

And then the third kind of legislation that we're seeing, transparency, mandatory diligence and a third kind is really around sanctions and penalties also, which has a human rights related focus for a good piece of it. In the United States, for instance, we have the International Trafficking Victim Protection Reauthorization Act, ITVPRA. Which allows cases to be brought against individuals or entities who knowingly benefit from participating in a venture that involves forced labor or traffic labor often which means looking up in your supply chain. In the UK, the Criminal Finances Act allows for the seizure of profits from companies will ultimately benefit or profit from gross human rights violations. So increasingly, we are seeing legislation and sanctions that do penalize companies in different ways for human rights abuses connected to their own activities or their supply chain. And we have a big law coming into effect in the United States in about two months the, Uyghur Forced Labor Prevention Act, which allows Customs and Border Protection to seize goods, if they are created in Xinjiang region in whole or in part, or have other indicators associated with forced Labor coming from China, which is an expansion of an existing regime that Customs and Border Protection in the US puts into place around good suspected of being created with forced labor. Canada has a similar to that that they started enforcing in earnest of last year.

Where all of this really ends up leading around these hard law norms is a couple of places. First, increasingly, human rights, through these broad legal requirements are now becoming more and more of a business imperative. It isn't just a question of, you know, we're going to do a little bit of due diligence and then call it a day, but by mandating human rights due diligence throughout the value chain, as countries are increasingly doing by putting into place these kinds of penalties/sanctions related regimes as countries are doing, it is compelling companies to effectively take human rights and treat it much as the way that they treat anti-corruption issues. It is part of their policies and procedures, it as part of their contracting process, it is part of their due diligence whether they're bringing on a new vendor or an employee, or engaging in a in a transaction or applying for obtaining lending or finance; it becomes a business imperative and simply part of how business ultimately it's done. And so, as we see this migration from soft law to hard law, what we see coming with it is a shift in terms of human rights now becoming the 'S' of the ESG, now becoming an unexpected part of simply how business is done and that is only going to grow over time.

But the second issue, which is perhaps less of a positive, and it's a place where I do want to end before handing it back: there is criticism that by effectively creating mandatory requirements around human rights you lower the bar. Yes, there may be greater levels of compliance in terms of more people, but it reduces best practice and companies that are already doing a lot more than what the law requires are going to feel incentivized to reduce their best practice activities down to the legal required minimum. It becomes much more of a check-the-box exercise around legal compliance, than it does around human rights best practice that a number of leading companies are exercising around the world today. And so, the point of dispute, and the point of potential controversy, and this is definitely coming up when we think about the EU directive that I mentioned, is: do human

rights laws end up lowering the bar but encompassing more people? Or, are they in fact going to drive forward in an aggressive way the kinds of positive reaction that we do and behaviors that we really do want and expect when we think about ESG-related legislation and some more activities? But with that, let me hand it back and eager to hear from my fellow panelists.

Ms. LUSSENBERG: Thank you, that's great. I've been scribbling a few notes, because I've got some interesting things to ask you once each panelist has spoken read. Reg, our next I'm actually going to run the timer on my phone, and then you don't have to watch your watch, and I'll put it so you can see it. Thank you so much.

Mr. REG MANHAS: Jonathan, it's a shame that you're not here. Been great friends, for many, many years so would have been good to have you here in person, but the next time. I want to say thank you to the CASE Western Law School and the Canada-US Law Institute for inviting and hosting me here these last couple of days and. want to thank for today Chris Sands and the Wilson Center for suggesting and supporting my attendance here today, so really great to be here. We have an excellent panel; we've got some amazing academics and thought leaders and human rights lawyers like Jonathan and Finn, and people who are practical financial experts like Michael as well. I thought you know what, what can I bring to the table here, and also recognize that it was a Friday afternoon, you know, how can I kind of create a bit of a narrative in terms of my own personal journey in this whole world of the last 20 plus years and through that maybe weave some of the trends that I've seen. And I've seen a real evolution of, you know, what we call today's ESG. I've been in this space since probably 1997/1998 when I was in Talisman Energy in Calgary. Over the years, you know, there's been a real evolution of the drivers, the stakeholders, the terminology and the policy frameworks, and I think my career kind of mirrors a lot of that evolution, so I thought I would just hop skip and jump around and kind of talk about what I've seen over the years in terms of drivers in this space, and how its evolved to, I think, a much more positive place. Because certainly, when I got involved, it wasn't a very pleasant place. I think you know, in the late 90s early 2000s CSR was really a new concept. There were not a lot of standards; there weren't real policy frameworks; there was no EITI, certainly there were no guiding principles. It was very much an open space. And I think what happened was, we had a lot of companies, natural resources companies, falling into potholes, so to speak. There was Exxon in Indonesia, BP in Columbia Talisman in Sudan – and I happened to be at Talisman during that time, and for those of you who were familiar – I know Diane, you wrote a book about it at the time, and Chris, that's how we first met day, and Goldy Hyder and I became veery good friends during that crisis – but I was asked by our CEO at the time, Jim Buckee, to leave the legal department where I was counsel, at set up a CSR function. Basically, to respond to Lloyd Axworthy at the time, who wanted Talisman to put in place a high level position to deal with human rights, stakeholder engagement, and Jim basically came to me and said 'go figure out what they want - go to Ottawa go to Washington go talk to human rights watch, go talk to the red cross - tell me what we need to do, you know, what's our role?' And I think Jim would even say today that, you know, the company

stumbled into what was a major crisis at the time. The issues were really around, you know, human rights the company's role on the ground in Sudan, and facilities and equipment being used by the government and what was the demarcation between the company and the government in terms of those issues. What were, you know, things around use of revenues in terms of prosecuting a conflict - you know what was the role of a company in terms of managing revenues that were going to a state. Some really difficult issues and some really bizarre conversations had you know frankly with people in Ottawa who somehow felt that we had more control than we really did in terms of what could be done. So, at the time like I said there were no real standards, and so we jumped into the space it was very much crisis management, it was very much around shareholder divestment, it was about U.S. sanctions, you know - we were potentially going to be delisted from the New York stock exchange because something called the U.S.-Sudan Peace Act that was weaving its way through Congress. And so, over years we built the frameworks, we built the policies, we built the approaches when it came to human rights, we became leaders in terms of transparency on use of revenues, transparency around due diligence on human rights, and I think eventually we're recognized as being one of the leading companies in Canada in terms of this space but it came through not a lot of carrots, a lot of sticks frankly. But that was the driver and I think a lot of companies at the time, CSR was a relatively negative frame, because it was all very much sanctions and penalties and criticisms.

Over time, you know, we built that up, and very proud of what we ended up accomplishing at Talisman, of course they're no longer around - bought by Repsol. We took that approach, we applied it proactively to other aspects of our operations around the world, we became very risk tolerant I guess you could say, but we felt we had good systems in terms of managing risk so we entered into the Kurdish region of Northern Iraq, we were exploring in Peru, we were in Colombia, we were in - Papua New Guinea, we were one of the first shale gas explorers in Poland, and a pioneer here in the United States. And we use all that experience in terms of our due diligence, our risk management approaches, our stakeholder engagement - to try to proactively position the company in a very positive way.

I eventually left Talisman in 2012 and I joined a start-up company, well not really a start-up but a company that had just IPO'd, based in Dallas, Texas, called Cosmos Energy; fabulous company - I always describe them as an IT company that just have to be looking for oil and gas you know just - the cutting edge of technology and explorationists and had vast success off the west coast of Africa in countries like Ghana and eventually discovered the biggest gas reserves off Senegal and Mauritania, which are currently being developed into LNG. And I joined them a year after they went public so I missed the IPO but went down there and the approach was 'Reg, we want you to come down here and help us build a function where we think we're as good above the ground as we had been below the ground.' And so, it was a rare opportunity to join an organization that really looked at it in a proactive sense and said look: we understand the risks of where we operate and we want to be proactive and we want to take the lessons of other companies, which doesn't happen all that often in terms of how companies learn. And so, that was a positive in terms of not having a stick or a carrot, it was

recognizing the risk and recognizing opportunity in building systems and building approaches and engaging in a way that positioned the company in a very proactive positive manner. Interestingly enough, you know, when I joined, Cosmos was still 60 plus owned by Warburg Pincus and Blackstone, private equity players from New York and they were very much supportive, and, you know, I spent time with each of the directors and those were the folks in both Warburg and Blackstone in terms of what are we doing why are we doing it and had their absolute support. So, it was an interesting space for PE firms which hadn't had a lot of experience, I don't think, in these areas, but they understood the risks - these are smart guys, smart men and women - and they recognized and supported the need to be proactive.

Over time, you know, we became involved with things like the guiding principles on human rights led by the great John Ruggie, who we lost a year ago, we became involved with sustainable development goals the, SDGs, where there is now a real positive proactive framework that companies can hang various activities on to demonstrate their positive contribution to whether it's environmental issues, or the strengthening of institutions, anti-corruption, community development, et cetera. So, you saw the whole space moving into a much more positive, proactive place where - there's real guidance out there.

I eventually left cosmos about two years ago before the pandemic, before the wheels fell off the industry for a little while, at least it seemed, and actually, over the past year have been working on a business model that is focusing now on a totally new space within ESG where it is not really about sticks or being proactive in terms of risk management, it's around the carrots of national policy frameworks whether it's in Canada, the federal budget when it comes to carbon sequestration, or as I think our friend from Enbridge talked about, United States 45q being you know carbon capture credits. And so, the company we formed is called Lapis Energy, and it's a start-up. It's purely focused on carbon sequestration, energy transition issues on a global basis, but, you know, right now our major focus is in the United States. And so, it's interesting that the entire company exists because of national policy and tax policy, you know. So, it's a long way from the days at Talisman, we were being banged on the head. It's now - the whole business model is around, you know, taking advantage of, you know, government recognition of the importance of dealing with climate change in a proactive manner and putting tax credits on the table, and, you know, we're probably a few days away from announcing our first deal where we are, we're working with an ammonia producer here in the United States -I'm not going to name them, obviously - but they will be offering probably half a million tons of carbon CO2 per year. We will sequester that, we'll gain 50 per ton credit for that, we can make money at that price. Beyond that, they see a market – so we're talking about supply chain - they see a market now for ammonia marketed as blue ammonia. They have clients, they have customers in Japan, they're already marketing this blue ammonia; we're not going to be injecting in probably 2025 but they're already beginning the sale of contracts, because they see an opportunity. So, it's about the decarbonization of the supply chain in the ammonia fertilizer business and carbon sequestration is a very large part of that.

So, it's in a really exciting place for us to be, where there's only six of us so we don't have an office yet, but we've landed a pretty big contract, so I think there's a lot of upside, a lot of potential. But it's been an interesting journey in terms of, you know, starting with something that was very negative and very, you know, reactive, to something now which is incredibly proactive and quite positive not only for the environment but for demonstrating there's a new path to be taken by you know former energy people, you know oil and gas folks as well. But through that, you know, whether you call it CSR, whether you call it sustainability, whether you call it social performance or ESG, and, you know, no matter how many rules are in place, I don't think the concepts really have changed. It's really about how a company looks at its risks, how wide of an aperture it has when it's looking at risk, the stakeholders it's engaging with when it's talking about those risks, and when you make a decision who do you involve, and when do you make that decision so you can actually modify your approach. And if you do that, you're not going to have to worry about hard law or soft law that, you know, Talisman learned its hard lessons on so with that I think I'll - end it there but look forward to a conversation.

Ms. LUSSENBERG: But wouldn't you say that it's changed, where you were reactive with Talisman and today - and that was not unusual because it wasn't front and center on the stage- today, it's front and center; if you are looking to raise capital, ESG is right out there, whether it's through the various pieces of legislation that Jonathan has referred to in Europe and we may see similar, you know, regulation coming out, either through the stock exchanges or through legal frameworks that people are now being held accountable for something that before we tended to shove aside. I mean, there have been some seminal situations like the Joe Fresh situation in Bangladesh, with the Rana Plaza fires, where people are horrified, absent a situation where there is an incredible transgression and I'm not trying to tar and feather our friends at Weston or Loblaws because they've taken an extraordinary amount of action to try to deal with those issues but it used to be, unless it was really bad nobody really looked at it, and I think today, to your point, it's way more proactive. The expectation is that you're going to address that topic.

Mr. MANHAS: Absolutely. Well, I mean back in the day it wasn't only Talisman which was caught flat-footed - it was our major investors who were flat-footed. I mean, I spent a lot of time in Toronto with the Ontario teachers, I spent a lot of time in Montreal with Case, in Victoria with BCIMC, in New York with the with the controller's office - OMERS, you name it. None of those organizations really were focused on CSR or advocacy. It all came kind of after the fact. So, you look at them today, I mean that's front and central in terms of how they operate and absolutely you couldn't get where you are without an ESG function now, because everyone's looking at it. It's incredible. Watch CNBC for an hour and see how often ESG is raised.

Ms. LUSSENBERG: Yeah, so that's actually a good segue to Michael, because Michael's going to talk about ESG in the context of the financial services industry, and in particular, we've asked him to talk about responsible lending practices. So again, I think financial institutions have had to consider the issues that ESG brings forward quite beyond just the financial disclosure, whereas, you

know, our own Mark Carney was a real leader in pushing for a framework, and we still haven't come to closure yet on whether that is going to be the final framework, but at least there's an acknowledgement that we need some framework for disclosure. But Michael, speak with us about responsible lending practices, what the financial industry is doing and - I think I've raised this before - with the current refugee situation, what can financial institutions do to help those that are displaced coming into Canada or the United States, where some of the traditional norms and due diligence that you might do on your client, and we all know you're subject to challenging know your client rules, so how are you straddling that fence?

But please start first with this concept of responsible lending, and what changes have you seen in terms of what banks are requiring and how they're dealing with ESG? Thank you.

Mr. MICHAEL TORRANCE: Thank you, Selma. Thank you for organizing this great panel I've been totally enraptured in the discussion and it's a real privilege to be on a panel with people like Jon Drimmer and Reg and Fenn, and I've had the benefit of being able to speak with Reg and John over the course of my career as I've as I've entered this really fascinating field, and I think it's worth pointing out that a couple things about the panel being composed of lawyers, many of whom have had times in their career in you know private practice or in corporate practice dealing with very complex and unstructured problems, and then really becoming incredible problem solvers, and then leveraging that expertise and that knowledge to work with governments and coming up with really innovative ways of thinking about regulation and governance and corporate governance and I think, that's maybe the buried lead that I'll pull out of the two previous speakers discussions; is speaking to an audience of lawyers, I think really what this is I think probably the most interesting to me at least topic around this panel is how what we're talking about is a very innovative way of looking at regulation and corporate governance and historically how this has evolved - the financial sector has played a very significant role or - maybe be better to say has been a real focal point - of how this conception of corporate governance and regulation of the corporation has evolved over the last 20 plus years. So, Reg has told the story about work he did with Talisman in the 1990s, and he rightly pointed out that you know there wasn't really much of a playbook with how to handle those kinds of challenges at that point. I just got out of AGM process, and in advance of that AGM I had investor engagement with about 10 major institutional investors and almost all of them wanted to talk about ESG and climate change, and we were dealing with about four shareholder proposals on those topics advocating about how we've integrated these topics into corporate governance.

We were referring to standards, we were dealing with good practices, showing very elaborate disclosures we've put together. I think that's where we've come from those early days, and it's really incredible to have been able to observe in the course of my career, how - that evolution has taken place.

I think one of the key drivers of this topic from a legal perspective is the international nature of the problems that we're talking about; the real topic of this panel is around supply chains and human rights. That's a great example of, in a globalized economy where you have multinational companies that have supply

chains that stretch across multiple jurisdictions, you have issues around human rights related to international trade but also the movement of people, we can broaden that topic easily out to environmental topics. Jon Drimmer gave interesting discussion of US legislation around human rights, the Uyghur focused forced labor legislation that's coming into effect, I've read recently about similar legislation around illegal forestry and using similar types of approaches to try to address illegal forestry in developing countries by prohibiting or restricting the import of goods made from those illegally harvested wood into the US, and imposing fines and penalties for companies that don't do adequate diligence on this. There's actually a regulatory strategy around all of this and interestingly enough, the financial sector investors play actually an important role in, I would say, in alignment of companies with good practice. So, if you look at standards like the Modern Slavery Act for example, you know it's a comply or explain type of framework; it requires disclosure, but it doesn't prescribe content. There's many examples of that where regulators have limited tools to be able to prescribe how companies undertake things like due diligence how they manage their business. They may not even be well positioned and as knowledgeable about topics like human rights or as or like climate change, or have access to data, or even have jurisdiction to enforce rules in traditional ways, and so the way that they get at these challenges and try to have solutions to multi-jurisdictional policy concerns like climate change or human rights is to set out the parameters about information disclosure; what the market becomes aware of, how companies have to discuss their practices, what kinds of frameworks for disclosure they might put out to the market and then there's an implicit role of the financial sector, or by NGOs, or by others, to digest all of that kind of information, be able to make informed decisions - whether they be in relation to investment, or campaigns, or activism, or purchasing decisions of the consumer - and then that in and of itself imposes consequences through the market that can align behavior with good practice. And so, when globalization really happened in earnest in the 1990s, there was a real fear that there would be a race to the bottom in terms of corporate good practices, and it didn't actually turn out to be the case. And I was fascinated to hear John even say that now there's thinking about how the imposition of regulation could actually lower performance the reason why that wouldn't necessarily be the case in the absence of regulation is because of the fact that companies that have these global footprints that are subject to such strong stakeholder pressure are themselves adopting their own self-governance approaches, whether it's in a supply chain having auditing protocols and setting standards for factories, or their own suppliers labeling goods as sustainable as we see in the in the palm oil context. Or now, even in the financial context, actually seeking capital based on qualities of a company around sustainability or environmental social and governance performance. That kind of pressure and context is actually driving up performance, and so it's true to say that if you were to simply impose a regulatory regime over top of that, one might kind of change the approach to say well, instead of actually advancing to achieve the best practice because I view this as a competitive advantage, you might actually just seek to achieve the minimum requirement because now it's turned into a legal compliance dynamic.

So, it's a very fascinating context in which lawyers have to, I think, be much more attuned to the full scope of rules and expectations, and the role of this broad array of stakeholders, and how their expectations define a set of normative parameters for companies that they must respond to. There's an imperative for them to respond to it, because it relates to management of their brand, of their reputation, of their relationships with their own customers, with their own investors, and I think, I'll just use that context to pivot into the question that was put to me around the role of, it was responsible lending, but I think it's even broader than that. In the financial sector, there are standards around responsible lending that have developed like the Equator Principles, for example, that started off as a standard that was put out by the World Bank to define how they would undertake due diligence in relation to investments that they would make, particularly in developing countries.

That standard emerged into a private sector voluntary framework called the Equator Principles, which also prescribes due diligence approaches for environmental and social risk in the context of certain types of project finance or asset-based lending. The scope of that and the types of issues that that covers has grown quite substantially over the last 20 years. The most recent update to that framework was put out last year and it includes a lot around human rights; it includes considerations of free prior and informed consent of Indigenous peoples, there's discussion around human rights due diligence, climate change as a focal point of due diligence topics. And these are, for now, for projects that are all over the world – even in developed countries, including in North America. So, a company, for example, that wants to finance a project through banks – there's over a hundred global banks that are a part of the Equator Principles – they have to be alive to the due diligence that will be undertaken, and that they'll be evaluated against, that the Equator Principles sets out. And it creates this framework of normative expectation that includes, but also goes beyond, what might be minimum legal requirements around some very complex topics around human rights. I think an important fact is that it imports, and is often drawn upon and defined by, international standards. So, these include things like the Taskforce on Climate-Related Financial Disclosure's disclosure framework, but which also sets out approaches to good governance around climate change, it includes the UN guiding principles on business and human rights, or it includes concept like FPIC, which are actually derived from international instruments, like UNDRIP, the United Nations Declaration on the Rights of Indigenous Peoples. These kinds of standards are the 'soft law', if you will, that John talked about, that can not only transform into hard law when they become regulation, but they cannot also transform into legal expectation when they're embedded into contracts, when they become conditions of financing, when they are conditions have access to capital. And in that respect again can be really come core to legal expectations on the on the company that is receiving funds, and on the financiers that are providing funds.

Beyond that project finance context, there is increasingly a whole world of financial product we call sustainable finance, or responsible investment products and services, where financial institutions around the world are competing with one another to try to be more sophisticated on the topic of sustainability, because you

have 10s of trillions of dollars worth of assets under management by asset owners or asset managers that have committed to integrating ESG, that have pension funds or clients and others that are demanding that they are sophisticated on this topic and integrate ESG considerations, and you have an evolving conception within the marketplace that in fact good management of these topics by a company is actually necessary in order to preserve the long-term value of the corporation. And so, therefore, it's actually potentially material in the view of the investor and could affect their decision to invest or not invest. And this is what has really heightened the focus onto ESG in terms of how investors engage with companies. That engagement has caught the attention of executive management of boards, so it's driven a lot more engagement and emphasis on committing the resources necessary to have very strong ESG and sustainability programs.

The thing I'll close with is probably the most exciting development to date on this, which is going to be a major game changer to cement all of the things that Jon and Reg, and I'm sure Fen will talk about and really transform this into the world that we lived in as we were, you know, coming up in this field. This has legal implications, but it's largely non-legal, to the future state is the role of Securities Regulators. There are already proposals on the table from the U.S. Securities and Exchange Commission, the Canadian Securities Administrators, the UK has implemented rules around this, as has the EU and the IFRS has created an International Sustainability Standards Board to embed these concepts in that global accounting framework to require disclosure of very detailed and complex climate related disclosures. And, When the case of the ISSB even broadening that out to sustainability disclosures more broadly, which in the in the phraseology that is being adopted by the ISSB, have an effect on the long-term value of the company. So, changing conceptions of materiality, how do you even assess a question like that, sometimes, deeming disclosure to be required even regardless of what the actual assessment of materiality would be. So, as that world unfolds, this will become even more embedded into the control functions of companies, part of the clear investor dialogue that is already happening, but will happen, even more so, and the subject of regulatory oversight. So, that's going to be a catalyst for making this whole way of thinking about corporate governance even more embedded into legal, regulatory, and good governance expectations.

Ms. LUSSENBERG: That's a lot to digest. I'm just going to play devil's advocate here; so, that's all good and well for large publicly traded company to invest in ESG disclosure. It's got the horses for courses. There's a whole new industry out there of people who are doing the ESG disclosure helping companies, but you need to have the money to do that, and so there were a couple of things that ran through my mind, as you were talking. Is ESG disclosure a benefit for the rich for the big companies? What about small companies? We heard earlier on today a lot about, you know SMEs, which I found very refreshing, as someone who for years have sat on the NAFTA committee now a CUSMA committee where our biggest dialogue between Canada/the United States was what was a SME in the US was a big company in Canada. And you know, I find it interesting that we're now talking and the number of our speakers, particularly publicly elected officials, are talking about how the SMEs are the drivers of our economy and on

our road to recovery, but they can't afford all of that. And then the other question I would have to you is the cost of capital. Is going to cost me more money to borrow money? Or is a financial institution not going to lend to me if I don't have that ESG disclosure or that ESG platform? or are they going to help companies move forward? And CPPIB in Canada was quite interesting; it took the position not too long ago that it wasn't going to disinvest from companies that were not ESG I'll say friendly doing disclosure doing the right thing, it was going to continue to hold the investments, but it was going to demand that those companies try to move the needle forward, and were prepared to work with them to move that needle forward. I know it's a bit of a large question, but I don't want to lose that thought, as you were talking about, all the great things that are happening within the financial services sector. But is that really just for the big and the rich? or how are we dealing with the smaller companies which drive our economy and create opportunities?

Mr. TORRANCE: Yeah, these are these are great questions. So, on the first point, I think, and I would say that these aren't necessarily great developments. I would just say that they are developments, and many people can have different views of whether they're good or bad, but they're empirically happening.

In terms of the role of the of the SME and the view of the SME, there's good news and bad news, and I'll start with the bad news for the SME. A lot of these developments, when we're talking about supply chains, for example, the supply chain of big companies are SMEs. So, if there's rules or expectations around how big companies manage supply chain human rights, then there's going to be a market imperative for SMEs to consider this issue as well. So, they won't be insulated from these developments by virtue of size, insofar as they have consumers and customers who are also responding to these kinds of interests, the same even more so, it looks like will be the case with climate; the proposals of the SEC are good example, where there's an actually, surprisingly early integration of what's known as 'scope three emissions and disclosure requirements' by these regulators, which will mean that large companies have to quantify and disclose the emissions of their supply chain. So again, if you're in that supply chain, then your ability to quantify and disclose emissions could be required in order for you to be able to participate in the supply chain, and could be a competitive advantage, potentially, if your emissions are managed better than others, or competitive disadvantage, depending on the circumstance. So that's the bad news.

The good news is that with some limited parts of sustainability where there may not be flexibility, I always counsel companies, people who are interested in developing programs around this, to understand that really you should focus on what's important for your business. And so, you don't actually have to boil the ocean; you can do an assessment of what is Important for your company, and you can focus on those areas, and then you can focus your efforts around disclosure or around stakeholder engagement on those kinds of topics. And so, it can be scaled to the nature and the size of the business.

But increasingly I think there's going to be certain things that are table stakes, including, you know, your impacts on human rights issues, you know, your ability

to maintain positive stakeholder relations, and your emissions profiles, which will increasingly probably be needed in a variety of contexts.

On your second question I guess around the idea of, you know, is this is this more kind of well, maybe you could you repeat your second question? I don't want to misstate.

Ms. LUSSENBERG: That was a while ago. I was asking about the cost of capital. Right? And how banks are dealing with that? And you know, are we ostracizing those who you know who can't afford to do that disclosure, right?

I mean, I certainly know that from speaking to people, doing your scope three emissions and quantifying that is no small task. So, does that mean that we are taking people out of the supply chain? And maybe that's for a broader discussion. But my question was really about capital and what trend you're seeing? You know, it's all good and well if you're Maple Leaf Foods, or you're Xerox, or you're Honeywell, or one of these large companies, but if you're a smaller company and you need access to capital, are you being penalized for a lack of ESG disclosure? And what is sort of the approach of the financial institutions? And I don't want to belabor this, because I do want to get to Fen, and we can come back and the question session as well, but if you had some quick thoughts.

Mr. TORRANCE: So, just briefly I would agree with the CPP view. Like I don't think it's about that, it's not about, you know, taking a punitive and divestment approach and that's certainly not the approach that we take in most if not all contexts. I mean, you have to manage risk appropriately, and if there's undue risk, you'd have to govern yourself accordingly. But I think this is more about actually trying to drive positive impact, and you can do that better through incentivization than you can through breaking relationships and having what in the human rights context is known as leverage, which is a concept that I really like; the idea that you can have leverage in commercial relationships that can help drive better performance, and even under the UN guiding principles which is dealing with some of the most severe issues of human rights views breaking that relationship, and therefore losing leverage, as a very last resort. So, I think that it's not about imposing, you know, penalties; in fact, with sustainable finance the drive is actually to provide incentives so you can have sustainability linked loans, where the achievement of key performance indicators on sustainability actually provides financial benefit. We're seeing in green bond markets and other types of sustainable finance markets where investors are willing to pay a premium in order for companies to be able to achieve these kinds of outcomes. I think carbon markets are going to play a similar role.

So, you know, there's definitely going to be carrot and stick elements, but I think incentivization of good performance is a better strategy from a sustainability perspective and will be more effective to achieve positive outcomes.

Mr. LUSSENBERG: With apologies to Fen, Reg has asked just to have one point, and then Fen over to you.

Mr. MANHAS: In terms of cost of capital and accessing and capital, we've just gone through a private equity roadshow, and we've closed the deal with a private equity investor. Contacts in the oil and gas business tell us that, you know, PE firms are not going look at you unless they can garner at least a 30-40% return

on their on their capital. When you're talking about sustainable funds, when you're talking about the ESG kind of focused organizations, we were told and, ultimately, we were only required a 10% return. So, it's an incredible difference, actually. So, there's a huge financial driver out there right now.

Ms. LUSSENBERG: Because you're doing good?

Mr. MANHAS: Doing good, and we fit them in the right funds of these firms.

Ms. LUSSENBERG: So now, over to Fen because we in our discussions I don't see Fen popping up on my screen but I'm sure he will pop up soon. Fen is going to try to stir the pot a bit and talk about policy and Canada-U.S. policy alignment. Fen, you're going to keep me honest, if I'm misstating what you're going to talk about. We also had debates about loss of sovereignty; a topic very near and dear to Canadians hearts when we look at what's happening south of the border and for years, certainly we've said, you know, when it happens south of the border it's like to become North, it's just a matter of time. But also talking about financial or the regulation of our financial markets, ESG, the role of central banks.

Fen, over to you, and thank you for your patience. And Fen, while he is a professor in Ottawa, is currently joining us from California, and has been following the proceedings diligently all day for which we thank you.

Mr. FEN HAMPSON: Thanks very much Salma, and I want to thank the organizers for inviting me to participate. The discussion has been fascinating, and I've learned a lot, including from my fellow panelists just a few moments ago.

There are three questions that I would like to pose: the first is why is ESG with the emphasis on the "E" become the new mantra of financial institutions, central banks, and the business community? Secondly, what are the implications for Canada-US relations? And thirdly - big question - is this good public policy?

First, I think it's important to recognize that politicians, especially in the United States, are pushing ESG enforcement onto financial market regulators and financial institutions because there's gridlock in the U.S. Congress. The administration can't get new climate change laws and regulations passed, so they've turned to what some would call second-best rulemaking. But it's not just the politicians. Social activists for a long time have been demanding behavioral change, and the change has been dramatic. Even ESG investing has evolved into a $35 trillion industry; by 2025 some estimate that global assets managed and ESG portfolios will reach $53 trillion, almost doubling. The latest epistle comes from the Security and Exchanges Commission's new climate disclosure regime. As the SEC purports and we've just heard, climate change disclosure is not about giving investors information about climate risk, its primary purposes to force companies provide information so that shareholders, interest groups, and others can enforce so called net-zero targets.

A sticking point is - and we just heard about it again - is when the SEC will mandate disclosure of scope three emissions. Those are emissions through supply chains. And I think it's you know, fair to say that that's going to be a very complicated process. But the jury is really still out whether this is sound public policy. Given the highly integrated nature of financial markets, and it's not just financial markets in North America, Canada and Mexico are going to find their own policies dictated by US financial regulators with an attendant loss of

sovereignty. There are no unified reporting standards on ESG performance; companies are rated differently by different rating agencies, and because the reporting rules are so variable, they're very strong incentives for companies to cherry pick their ESG performance measures to boost their sustainability and social ratings. And as the Globe and Mail recently reported, it's pretty much of a Wild West out there when it comes to the rating game.

The problem is further compounded by global supply chains, which support the operation of many North American companies, and I know we've heard a lot about this de-globalization, especially this morning but globalization isn't going to go away. I think the other point that was just made is that outside of North America, certainly in Europe, there is a movement towards unified reporting standards. When it comes to leveling the playing field, the German Parliament has its own Supply Chain Due Diligence Act, which goes into effect in 2023. The European Union has its own sustainable financial disclosure regulations introduced last year. The UK is developing its own ESG legislative framework, and, at the international level, I think it's fair to say - and our chair drew this to my attention in our earlier discussion - the Financial Stability Board has pinpointed the need to coordinate the large number of growing initiatives to develop some common standards and the International Sustainability Standards Board established by the IFRS foundation is going to be focusing its work on climate change-related reporting to develop some common standards, which I think is a good first step.

But it does raise the question - and this could be a good question for discussion - is whether Canada and US in particular need to coordinate better our collective efforts to harmonize reporting standards and develop a made in North America approach? But there's some bigger issues here.

First of all, from a Canadian standpoint, our producers are being hit with a double whammy. And we heard some of that this morning. ESG and carbon taxes are going to erode the competitiveness of the Canadian manufacturers and other industries vis-a-vis the U.S., because the US won't have carbon taxes anytime soon.

A second negative externality is that vigorous ESG will drive businesses out of the public domain. This is already happening for other reasons, but ESG may well accelerate this trend by driving costs up — the cost of capital, as we just heard. With all due respect to my fellow panelists, I'm not a lawyer, but it does mean more lawyers and more forms. And if you sat on the Board of Directors, you know just what I mean. Private equity. I'm sorry?

Ms. LUSSENBERG: Let's look at that. There are sustainability, ESG consultants that are out there, and their fees are right up there with lawyers.

Mr. HAMPSON: Exactly. A third negative externality is that the ownership may well be pushed offshore. We see virtuous and unvirtuous markets emerging, the holy and the unholy, or the partially virtuous, and call that re-globalization through the back door.

Fourth, our governments are being forced to make bargains with bad actors who are weaponizing supply chains. And I think it's fair to say, in the long term, this will not lead to an efficient allocation of capital. We may be achieving the

worst of all possible outcomes, we won't reach our ESG targets, and we will be creating a lot of market distortion and deception. And from a global perspective, the world isn't better off if bad things happen in supply chains somewhere else. The perverse consequence of current policies is that governments may end up losing control and the ability to manage ESG sensibly and responsibility. And I think it's fair to say, sound public policy should be based on a cardinal principle; that if you're going to regulate, if you're going to set rules, you want to control consumption, production at source, or both, that is, the rationale for carbon taxes, which are directed at both consumption and production and it's best to keep it simple, not complicated. Thanks.

Ms. LUSSENBERG: Thank you. So, here's my question to the panelists, and then we'll see. I don't know whether we have questions that have come in online, but here's my question to each of the panelists: you get a minute and a half, no more. Who pays for ESG? Is it the consumer? Is it the employee? Is it the investor? Because there's a cost, and I'm not saying it's a bad thing. But, there is a cost associated with all of the ESG measures, and one of the things, certainly, I've had the opportunity to debate, is if you're not making money it's all good and well if you have no profits, you've got no money to deal with all of these great disclosure initiatives, and prepare the reports, and issue your sustainability report; which is a big sucking sound at many companies at the moment. And I'm not exaggerating, you know, if you do your AIF and you do your MDNA, and now you've got your sustainability reporting, you need another whole team of people who are going to do that. You need to audit, you know, the information has got to be audited if you're going to disclose it publicly. And I'm not certain I agree with the view that it's going to drive everyone, or it's going to drive privatization, because private equity is not stupid. Money has to come from somewhere, and they too will have expectations. They may not require the same level of reporting, but they're going to require certain information so that they know that their money is being put to good use. But I'll start with the question o, who pays?

Mr. HAMPSON: Well, I'll take a crack at that, Selma. I think it's fair to say, it's going to be producers and consumers. When anybody pays their winners– and I think you answered your own question a bit earlier when you talked about lawyers and consultants, they will be the winners in this– but, but at the end of the day, the costs get passed on to the consumer, and I think we will see, we're already seeing that, in the form of higher prices.

Ms. LUSSENBERG: Jonathan, if you'd like to chime in.

Mr. DRIMMER: Yeah, I think there's no question about it, I completely agree with Fen. I mean, I think, you know, Fen's right. And your point as well; It absolutely does cost, an ESG does cost. And I think anybody who has been in a position in-house, like Michael, like Reg, like me, we've all seen the fact that acting ethically, acting in a way that is consistent with responsible business conduct, isn't free. That's why child labor can produce goods that are so cheap. Slave labor can produce goods that are so cheap. And I do think coming into line with these norms, the market will adjust, and these costs will be absorbed. And it's going to be with investors and consumers. I don't think there's any question because, as you said, companies do need to stay in business, and they will stay in

business; And that's how they're going to look to do it. And I think the big question, and the point I'll end on is, how much people are going to be willing to pay for more expensive items, or goods, or services, because they are "ESG compliant" or friendly, versus, you know, goods that may evade those laws and those norms. To me, that will be a very interesting market question as things progress and the ability of legislation to perhaps close any of those gaps.

Ms. LUSSENBERG: Thank you. Reg?

Mr. MANHAS: It depends on the industry you're in. Like I said, we're talking to ammonia producers, fertilizer producers; they feel that they can mark it as a decarbonized product and get a premium price for that. So, in that situation, it will be the consumer who will pay more, because they are demanding a particular product, or companies up the supply chain are demanding a certain product. But in other ways, you know, in the United States, I agree, there won't be a carbon tax, but there's a tax credit, so, at the end of the day, it's the taxpayer that will pay more ultimately. In Canada it will be more of the consumer paying, so, it depends.

Ms. LUSSENBERG: Michael?

Mr. TORRANCE: Well, I think there's a couple of ways of thinking about that: one is that, sometimes the cost implications are kind of the point of this. If you have a carbon tax regime, that's exactly about increasing costs associated with one way of approaching the development of a product, or an activity, and making it, therefore, more economical to pursue alternatives, and presumably as those alternatives become more common than that particular costs will no longer apply. So, that part of the regulatory regime imposes costs on consumers, or on producers or others. I would say, it would be the same for regulatory regimes that are imposing costs of due-diligence; those costs could be, like Jon said, slave-produced goods are cheaper. So, if you create a regime around creating more cost to doing business in weak-governed areas, and requiring due-diligence, then either there will be pressure, maybe on those areas, to change the way they manage these topics, or to source goods from other areas; and that could well impose costs in both management sourcing from those jurisdictions, or increased costs in doing business in jurisdictions that have higher standards, but again, that's probably the intention, and what's used to try to adjust behavior.

I'd also say, though, that I think that probably the most important one that doesn't get enough focus is on the potentially unintentional costs that are imposed, particularly when regulators get involved. And I think we're going to see this a lot as regulators get more involved around disclosure requirements. And, also the perverse incentives that regulation can create, so there's some examples like with some of these disclosure rules where, if you have a target around climate, you must disclose and by implication, if you don't you don't have to disclose. So, what are those who want to avoid the cost of having to disclose going to do? They won't set a target, and how does that advance any kind of policy goals around emissions-reduction? And there's lots of examples like that.

Another one, which I think speaks to the idea of coordination that Fen talked about, would be carbon border adjustments, or even alignment of disclosure requirements across multiple jurisdictions. There's a lot of these efforts around increasing these requirements and having these regimes were originally intended

to be complimentary of one another. But because very different approaches are being taken in different jurisdictions, or by different centers, you've actually exacerbated the problem- having even more frameworks, or more rules, that are actually not compatible with one another and that creates, I think, a really problematic regulatory burden; because it's not actually increasing disclosure, or market information - it's simply duplicating processes that will require companies to not just comply with one, but perhaps multiple ones. And that's a totally wasted kind of effort and wasted costs.

On carbon border adjustments; I'm not an expert in that area, by any stretch but, that's an example of coordination between the US and Canada, I think will be very important if either country is adopting that, about how you assess that, so that there aren't unfair or inappropriate methodologies being used to quantify the costs associated with production of goods that would impede trade in a way that again isn't addressing the problem. I think in the first category, there may be some deliberate cost-increase that is actually trying to adjust behavior, the second one, though, is inefficient regulatory systems, which we can and should avoid.

Ms. LUSSENBERG: So, I'll start by asking if there are any questions in the room, and if there are a significant number of questions in the room, I'm then going to suggest we alternate between those online and those in the room, in fairness to those who have been so good at following the conference remotely; which is not without its challenges.

And if I might ask our technical support; if you could give me a split screen, so that if we have a question I could see the hands of our speakers as to whether they want to, or are particularly enthusiastic, about tackling the question that's being asked.

First question is, are there questions in the room? Oh, Chris Sands; there's trouble. Do you mind speaking up, sorry?

Dr. SANDS: Sure. I guess because we've been talking so much about Canada-U.S. relations; to what extent do you think we could have common Canada-US standards and guidelines, so that our businesses work on both sides of the border, and they're working from a common set of goals? I know it's two different regulatory systems, two different sovereign systems, but what can we do to bring the two countries together around common definitions, to advance what I think are ultimately some shared objectives?

Ms. LUSSENBERG: That's great, thank you. Okay I'm going to take this. I don't have a split screen yet with the four speakers on it. It's coming I see. So, I'm going to start with Fen, because I know that this was a topic he was keen to embrace, and then, after Fen, I'm going to turn to Jonathan, and then we'll see whether or not Michael or Reg have an appetite, or whether we'll just move on to another question; which might be the better approach. And we'll pick on Reg and Michael in the next round.

Mr. HAMPSON: So, Michael did have his hand up.

Ms. LUSSENBERG: Oh did he? I didn't see that.

Ms. TORRANCE: I accidentally pressed that, I was just testing it and it went off so.

Ms. LUSSENBERG: Sure. We might have believed that two years ago, when you were new to Zoom. but you know. Anyways, Fen, are you willing to tackle this? I know it's something we've talked about.

Mr. HAMPSON: Yeah sure. I'll take a crack at it. I mean, I think we do need common standards and, you know, at least some common guidelines, because right now, when it comes to rating agencies, it's kind of all over the place. And companies are going to pick their favorite rating agencies so that they can game the system; and why wouldn't they? That's just rational behavior, and I think it is going to require political leadership from both governments to say, 'there's going to be a big problem here if we don't work on it'. It will involve, I think, some kind of engagement, obviously, by the key regulatory agencies to develop a framework. And there should also be engagement as one is thinking about standards, and don't just leave it to the rating agencies; engage the key stakeholders who are going to be affected by this. I think if we're talking about a new sort of governance approach, it's got to be multi-stakeholder and it's got to involve the private sector.

Ms. LUSSENBERG: So, Jonathan, I was picking on you as the next person to speak, are you good with that to address the topic, or would you prefer to pass? I can't hear you, Jonathan. I'm sorry, you're on mute.

Mr. DRIMMER: I think the idea around consistency, in terms of standards around ESG, is a critical global issue. I think it's certainly relevant in the US and Canada and their interrelationships- particularly given the trade and trade agreements. You know, some human rights provisions ultimately included for consistency there. But I think when we venture into what Fen's talking about, in terms of globally consistent frameworks, we do have proposals that are being developed around consistent reporting. We are seeing more regulatory requirements, like out of the EU, around certain consistency on a disclosure side, including for financial entities and instruments. And I completely agree with Fen that I think there is going to be a serious regulatory element to this, but I think there also has to be a business, but also a consumer consensus around this. What is the information that is relevant and important, salient to individuals who are the consumers of that information? And how can they get that information in a way that is usable and meaningful as they're making decisions, whether it's from a purchasing, or an investment, or voting or otherwise? So, I do think that there's a government element, I think there's a company element, I think there's a consumer element. I would say the final point is, it's kind of a mess right now in terms of consistency and reporting and standards. And I think the patchwork is, in part, a result of relevant youth of the industry, youth of the space, and hopefully it will become clearer. But it is a problem right now that we do have patchworks, both in terms of the regulatory and on the reporting side.

Ms. LUSSENBERG: I'm going to ask you to give us one of the questions from people online. Thank you.

UNIDENTIFIED SPEAKER: The question posed is: there's been a lot of discussion about the difficulties and costs related to ESG reporting. Can anyone touch on some possible solutions or better avenues toward solutions?

Ms. LUSSENBERG: Reg is going to tackle this one first.

Mr. MANHAS: First, obviously, Jonathan went through that there's a plethora of work being developed and a plethora of regulations globally. I would take a much more practical approach and have a risk-based lens, in terms of what are the key risks to various corporations, and then have those companies or have those industries report in a risk-based manner. It's a targeted manner; it actually gets to the stakeholder concerns versus a blanket approach, where you end up with a lot of nonsensical reporting, or reporting for the sake of reporting. How many people read those reports? How many people actually will hold companies to account that it's being reported? I think it needs to go through a risk-based lens.

Ms. LUSSENBERG: So, what are you saying? Are you saying, high-risk lots of reporting, low-risk not so much reporting? As that, sort of how you'd straddle the fence or?

Mr. MANHAS: To some degree. There needs to be some consistency, but I think that the element of understanding what the stakeholders - what are its human rights issues? What are the communities? What are the risks, and how was the company engaging with stakeholders? From that engagement, how is their development, and a set of metrics, that actually make sense - versus all being developed in Ottawa or Washington.

Ms. LUSSENBERG: Michael, did you want to chime in briefly?

Mr. TORRANCE: Yeah, I think that's a good point of allowing for the assessment of issues or risks, within the context of the company itself. It goes back to this idea of materiality, either from an investor materiality or a stakeholder materiality lens, which most reporting frameworks use as a threshold condition for what gets disclosed.

Some of the differences that we're seeing in recent regulatory proposals is that that threshold, or that test, is not always being applied. And so, there's a requirement to take steps to undertake processes or disclose, regardless of whether there's an assessment that it will be material, either to a stakeholder or to an investor, or both. So, that's one way that I think costs can be managed better. Then again, I think it goes back to the idea to what extent does this need to be a regulated area? Versus simply allowing markets to drive better performance, because of the competitive advantage it can provide if companies are able to do this well? And they are then able to make an assessment for themselves. whether this is relevant to their consumers, to their investors, or their capital providers.

One quick response to the earlier question about collaboration, or alignment, around North America. I think that it would be very powerful, I think there's reasons within our political systems, why we can't, as two federal states in North America, do that as well as we should. But there would be enormous opportunities for North America to have a unified vision around things like energy security, the role that plays, where energy comes from, how we consider things like human rights in that context, as well as managing ESG in a joint and coordinated way that I hope does come about.

Ms. LUSSENBERG: Thank you, Fen I can see your hand up, was that by accident or you'd like to chime in?

Mr. HAMPSON: It's not an accident. I think right now, the way the rulemaking structure is evolving in the North American context, is that we're

sanctioning a market for imperfect information through the absence of having common standards for reporting. And is that a good thing? I would say it's not a good thing, because it's contributing to uncertainty in the market, when you can do something about it, by developing some common standards.

Secondly, in the absence of a North American approach, as Michael just talked about, we're going to be yielding the ground to the Europeans, and where have we seen that before? We've seen that in the digital realm in privacy, where the Europeans have been the first mover in developing a rather elaborate regulatory architecture around privacy.

And the same thing - I referred to it in my remarks, Jon referred to it in his remarks - the Europeans are moving to first base here, and we're still trying to figure out where first base is, to be honest. Is that a good thing? I don't think it's a good thing. I think, for the reason you just mentioned; we're energy producers and consumers in North America, quite different from the European situation, and standards in the ESG space should reflect that. And it shouldn't be a beggar thy neighbor approach, which again in the absence of the common framework we're going to move in that direction, and Canadians are going to be on the short end of the stick. So, this does require leadership, it does require engagement by regulators at the fed/prov level, at the federal/state level. If we let things slide, it's going to, at the end of the day, hurt consumers and contribute to a lot of uncertainty in the market.

Ms. LUSSENBERG: Thank you, that was great. I see we have five minutes. I saw that Michael Robinson wanted to ask a question. I don't know if there was someone else who had put their hand up before Michael. Otherwise, I'll ask Michael to ask his question and to be brief. And I will, in advance, ask our panelists to be brief, so that we might get to another question, after Michael's question.

Mr. MICHAEL ROBINSON: It's Michael Robinson again. Very short. I haven't heard the OECD mentioned as a standard setter here. They're certainly qualified for - they produced in the 90s, principles of international business. And they certainly have the respectability. What do you think of them as the standard-setter?

Ms. LUSSENBURG: Can I just respond to that very quickly? I would just say, Michael, we've got the STGs, we've got the Equator Principles, we've got the, whatever it is, the task force for financial disclosure, we have ISSV. We have got too many people that are out there, in my view, and I've asked the camp panelists whether they agree, that pod is already huge. There are all sorts of people out there. And to Fen's last comment, we need to get our act together and decide what the right level of disclosure is, what we're going to disclose, and at what cost. That would be my response. I personally - and I expect, and maybe I'll ask our panelists, they can nod yay or nay - is the last thing we need is another organization to step in with another series of disclosure requirements and standards? Because we've got lots. That would be my response. Quickly, gentlemen, am I on the right page? Do you have different views?

Mr. DRIMMER: I actually think, you know, it almost supports your point, Selma, that we need a convener to bring this together. And I think the OECD is a great convener. And so, I would view them less as a standard. They are critical,

and the standards that they've set continue to be used as the absolute framework for responsible business conduct. And you see them incorporated now into legislation and proposed legislation. But for this purpose, convening and trying to get that consensus that you talk about. Selma, that would be as good a group as any, and would have, you know, the power that very few others would.

Mr. TORRANCE: And I would say that that is the role that they have played. And Jon's alluding to this with anti-corruption standards that have become the benchmark for OECD countries legislation. As well as I think they've raised the profile of the UN guiding principles and all their work. And then, on the Equator Principles – which I talked about – there's actually an equivalent for export credit agents that the OECD played a role in, actually creating legislation across the OECD countries, to embed the kind of due diligence that's done in the equator principles into export credit agency processes. So, they actually have a pretty prominent role already on this.

Ms. LUSSENBURG: One more question from people online?

UNIDENTIFIED SPEAKER: The question posed is: how difficult is the data element in the ESG space? For example, how do we reconcile disparate data, data that means different things for different industries, differing standards and expectations, or data that may not be readily available at all?

Ms. LUSSENBURG: Great question. I don't know that it will have a short answer. Reg do you want to tackle that first? And I see that Fen would like to address it as well.

Mr. MANHAS: And that's where the Price Waterhouses and others have such a market. And you talk about expensive consultants, I mean, there's a huge industry just in terms of that issue alone. I'm not sure how productive it is at the end of the day, and so. My view.

Ms. LUSSENBURG: Fen, your hand is up.

Mr. HAMPSON: Yeah. Sure, I mean I think that's a great question and it's a huge problem. It's a bit like, those of you with longer memories will recall when, you know, the GAT got into services. And people were scratching their head, you know, what's a service, how do we define it? You know, that's simple in comparison to data here. Because we also have to recognize that if you start getting into supply chains, these are companies that operate in different jurisdictions. In many cases, authoritarian jurisdictions. I mean a lot of supply chains continue to run into China or run to China. And they're already seeing huge data restrictions there. Makes it very difficult to do business. So, I think it's a very big problem. I like the idea of, you know, parking this issue in a positive way with the OECD. But that's going to require cooperation from, you know, the rest of the multilateral machinery that is engaged in this. And governments are going to have to say, we want it to be at the OECD, bring your marbles there, so that we can look at them.

Ms. LUSSENBURG: Great. I've been asked to wrap it up. We are coming up on 4:45 and we're going to get the, I am quite certain, excellent summary from Chi, shortly, of the day's proceedings.

I do want to thank my four panelists for your excellent contributions. Very much appreciate all your hard work and your insights and comments. And I hope

that those who were not able to join us in person this year, might consider joining us in in person next year.

I see that we have, it looks like, 10 questions still that are unanswered. So, I'm going to go out on a limb and say, if anyone has a true burning question, perhaps they can reach out through CASE and I could circulate it and see whether any of our panelists would want to address it. Or maybe those are old questions and there really aren't 10 questions out there.

Okay, thank you very much. My thanks to the audience for hanging in there, to the end of the day.