

# Matters to Consider for the 2024 Annual General Meeting and Proxy Season

Every year, in the course of preparing for their annual general meetings (“AGM”), reporting issuers must ensure their disclosure complies with updated requirements under corporate and securities laws, stock exchange rules, new guidance from proxy advisory firms and regulators, and developing corporate governance trends.

The checklist and overview that follow are intended to help reporting issuers in Canada prepare for the 2024 proxy season, their upcoming AGMs, and the associated annual disclosures by identifying key developments in disclosure rules and governance practices over the past year. Where we have posted an article with further details on a particular topic, a link is included in the following pages.

As in recent years, regulators and proxy advisory firms remain focused on disclosure relating to environmental, social and governance (“ESG”) matters, and in particular on climate change and diversity. Beyond ESG matters, regulators and proxy advisors have continued to issue guidance on more traditional themes, including: cyber risk oversight; audit committee experience; interlocking directorships; compensation clawbacks; and executive compensation. In addition, new legislation has imposed additional reporting obligations on private-sector entities to disclose measures taken to prevent and reduce the risk that forced or child labour is used in their supply chains.

If you have any questions about the matters discussed in this publication, please contact any member of our [Corporate Finance & Securities Group](#).



## I. CONSIDERATIONS RELATING TO ESG DISCLOSURE

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Assess ESG practices and disclosure, particularly relating to climate change and diversity, in light of regulatory initiatives and investor focus

*Regulators, institutional investors and proxy advisory firms continue to focus on climate change and diversity disclosure as central areas of interest. Requirements related to climate change disclosure continue to advance in multiple jurisdictions, though a mandatory framework proposed by the Canadian Securities Administrators (“CSA”) is yet to come into force. We are continuing to monitor updates from the CSA in that respect, particularly given the reiteration by proxy advisory firms of their 2023 guidance, with some expanded application. On the other hand, diversity continues to be a predominant governance issue this year, with certain proxy advisory guidelines expanding beyond gender diversity to include elements of racial/ethnic diversity. For more, please see page 3.*

Ensure compliance with new forced labour reporting requirements, and consider implications of certain amendments to the Canada Business Corporations Act (the “CBCA”)

*New forced labour legislation imposing reporting obligations on a wide range of private sector entities and certain government institutions came into force on January 1, 2024. For more, please see page 4.*



## II. CSA UPDATES GUIDANCE ON VIRTUAL MEETINGS

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For virtual and hybrid shareholder meetings, consider updated guidance from the CSA

*In response to growing concern of some stakeholders regarding challenges presented by virtual meetings, the CSA has issued additional guidance. For more, please see page 8.*



## III. PROXY ADVISORY VOTING GUIDELINES FOR 2024

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Consider the impact of updates from proxy advisory firms in their 2024 proxy guidelines

*In addition to matters such as environmental and social risk oversight and board diversity, proxy advisory firms have continued to issue guidance on more traditional themes, including cyber risk oversight, audit committee experience, interlocking directorships, clawback and executive compensation. For more, please see page 10.*

# Environmental, Social and Governance Disclosure

## **“ENVIRONMENTAL” (CLIMATE-RELATED) DISCLOSURE**

### *The Current Legal Framework*

There are currently no climate-specific disclosure requirements for Canadian public companies. However, issuers should be mindful that existing continuous disclosure obligations (including disclosure requirements in respect of material risk factors, material facts and material changes), which may involve climate-related considerations, continue to apply.

### *Guidance from Proxy Advisory Firms*

In 2023, Glass Lewis & Co. (“**Glass Lewis**”) introduced director accountability for climate-related issues for companies with “material exposure to climate risk stemming from their own operations”. Glass Lewis believes such companies should provide thorough climate-related disclosures in line with the recommendations of the Task Force on Climate-related Financial Disclosures (the “**TCFD**”). In 2024, Glass Lewis extended the application of these guidelines to companies on the TSX 60 Index operating in industries where the Sustainability Accounting Standards Board has determined that such companies’ greenhouse gas (“**GHG**”) emissions represent a financially material risk.

Additionally, Glass Lewis will generally recommend a negative vote for the governance committee chair of any company on the S&P/TSX Composite Index that does not provide clear disclosure about the board’s oversight of environmental and social issues. Glass Lewis emphasizes that the structure of oversight is at the discretion of the company, but it will assess whether directors demonstrate a meaningful level of oversight and accountability for the company’s significant environmental and social impacts by reviewing proxy statements and governing documents.

Glass Lewis may recommend voting against or withholding votes from responsible directors if it finds either of these disclosures to be absent or significantly lacking.

While Institutional Shareholder Services (“**ISS**”) does not have a similar, general policy with respect to environmental and social issues, in 2023, ISS announced a new voting recommendation policy for issuers listed on the Toronto Stock Exchange (“**TSX**”) that are deemed to be significant GHG emitters (defined as issuers on the Climate Action 100+ Focus Group list). ISS will generally recommend voting against or withholding votes from the incumbent chair of the responsible committee (or other directors on a case-by-case basis) where it determines that the issuer is not taking the minimum steps necessary to understand, assess, and mitigate risks to the company and the larger economy related to climate change. ISS expects minimum steps to include detailed disclosure of climate-related risks in line with the TCFD recommendations and medium term GHG reduction targets or net zero-by-2050 GHG reduction targets relating to a company’s operations (Scope 1) and electricity use (Scope 2).

While, for the most part, environmental disclosures remain voluntary in Canada, issuers are reminded to approach this disclosure with the same rigor that is applied to their mandated disclosures.

### *Proposed Changes*

In 2024, we expect to see further developments regarding proposed National Instrument 51-107 – *Disclosure of Climate-Related Matters* (“**NI 51-107**”). NI 51-107 would establish mandatory climate-related disclosure requirements for reporting issuers in Canada, largely premised on the framework developed by the TCFD. As

currently proposed, NI 51-107 would apply to all reporting issuers (other than investment funds and certain specified issuers). For a detailed summary of the proposed NI 51-107, please see our November 2021 blog post (accessible [here](#)).

Since initial publication of the draft NI 51-107, significant international developments have occurred with respect to climate-related disclosure. On June 26, 2023, the International Sustainability Standards Board issued two inaugural International Financial Reporting Standards ("**IFRS**") Sustainability Disclosure Standards, which are effective for annual reporting periods beginning on January 1, 2024 – IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information* and IFRS S2 *Climate-related Disclosures* (collectively, the "**ISSB Standards**"). The ISSB Standards require an entity to disclose information about all sustainability-related and climate-related risks and opportunities that could reasonably be expected to affect the entity's cash flows, its access to finance, or cost of capital over the short, medium or long term. On March 13, 2024, the Canadian Sustainability Standards Board adopted the ISSB Standards and released its first proposed Canadian Sustainability Disclosure Standards ("**CSDS**"). The proposed CSDS 1 and CSDS 2 rules align with IFRS S1 and IFRS S2 and include Canadian-specific modifications. The proposed rules are open for comments until June 10, 2024. The CSA has indicated that once the CSDS consultation is complete and the standards finalized, it anticipates seeking comment on a revised NI 51-107. It is expected that the CSA will also have regard to the newly adopted Securities and Exchange Commission rules aimed at enhancing and standardizing climate-related disclosures in the United States.

## "SOCIAL" DISCLOSURE

### *The Current Legal Framework*

Consistent with other ESG disclosure trends, "social"-related disclosure requirements are gaining traction. In particular, legislative action targeting modern slavery, as well as increased scrutiny on supply chain due diligence, will result in additional reporting and disclosure requirements in 2024.

On January 1, 2024, the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (Canada) (the "**Act**") came into force. Subject to certain exceptions, the Act requires any entity that produces, sells, distributes, or imports goods into Canada, or controls an entity that does so, to submit annual reports if the entity:

- (a) is listed on a stock exchange in Canada; or
- (b) does business in Canada (or has assets or a place of business in Canada) and meets at least two of the following thresholds, based on its consolidated financial statements, in at least one of its past two financial years:
  - (i) at least \$20 million in assets;
  - (ii) at least \$40 million in revenue; and
  - (iii) an average of at least 250 employees.

The annual reports should provide detailed steps that the entity has taken to prevent and reduce the risk that forced labour or child labour is being used in its supply chain. Annual reports must be submitted to the Minister of Public Safety and Emergency Preparedness. The initial report is due by May 31, 2024 (or earlier, for CBCA companies that provide their annual financial statements to shareholders before May 31 of each year). For a detailed summary of these requirements, please see our October 2023 blog post (accessible [here](#)).

## Guidance from Proxy Advisory Firms

Glass Lewis has updated its guidelines to state that effective board oversight of human capital management issues is not limited to a company's policies and disclosure on workforce diversity and inclusivity measures; rather, boards should be broadly accountable for direct oversight of workplace issues at large (including labour relations, fair labour practices, diversity and inclusion, employee health, safety and well-being, compensation and benefits, and recruitment, development and retention). In egregious cases where a board has failed to respond to legitimate concerns regarding a company's human capital management practices, Glass Lewis may recommend voting against or withholding votes from the chair of the committee tasked with oversight of such company's environmental and/or social issues, the chair of the governance committee, or the chair of the board, as applicable.

## "GOVERNANCE" DISCLOSURE

### *The Current Legal Framework*

Issuers must disclose information regarding their corporate governance practices in accordance with National Instrument 58-101 – *Disclosure of Corporate Governance Practices* ("NI 58-101"), which is predicated on a comply or explain model.

Since the introduction of NI 58-101, the CSA has conducted annual reviews for the purpose of identifying

Trend	Year 1 (2015)	Year 9 (2023)
Total board seats occupied by women	11%	27%
Chairs of the board who are women	--	8%
Board vacancies filled by women	--	43%
Issuers with at least one woman on their board	49%	89%
Issuers with 3 or more women on their board	8%	36%
Issuers with at least one woman in an executive officer position	60%	71%
Issuers that adopted a policy relating to the representation of women on their board	15%	64%
Issuers that adopted targets for the representation of women on their board	7%	43%

As a result of amendments to the CBCA that came into effect on January 1, 2020, CBCA public companies are required to provide additional disclosure regarding certain "designated groups" on their boards and in executive officer positions, including, among other things, policies relating to selecting members of designated groups as directors, and how the level of representation of designated groups is considered in nominating candidates for board and senior management positions. In addition to women, designated groups include Aboriginal peoples, persons with disabilities, and members of visible minorities.

In May 2023, Corporations Canada released its annual diversity disclosure report, which showed modest progress in the levels of diversity across senior management. Among boards of directors, despite some improvement on representation, the percentage of overall board seats filled by women and members of visible minorities decreased slightly. Certain notable results from the report included: (i) 57% of the companies reviewed had at least one woman on the board; (ii) 3% had at least one Indigenous person; (iii) 23% had at least one member of a visible minority; and (iv) 3% had at least one person with disabilities.

### ***Guidance from Proxy Advisory Firms***

Diversity also remains on the radar of proxy advisory firms. Gender diversity is a determining factor in voting policies of ISS and Glass Lewis. For companies on the S&P/TSX Composite Index, ISS recommends voting against or withholding votes from the chair of the nominating committee (or equivalent if no nominating committee has been identified) where women comprise less than 30% of the board of directors. Similarly, for TSX-listed companies, Glass Lewis recommends voting against or withholding votes from the chair of the nominating committee of a board that is less than 30% gender diverse, or the entire nominating committee of a board with no gender diverse directors. Previously, Glass Lewis had a fixed numerical approach, which would recommend voting against or withholding votes from the nominating committee of a board that had fewer than two gender diverse directors.

As announced by ISS in 2023, for AGMs held on or after February 1, 2024, ISS will generally recommend voting against or withholding votes from the chair of the nominating committee (or equivalent) of companies in the S&P/TSX Composite Index where the board has no apparent racially or ethnically diverse members and the company has not provided a formal, publically-disclosed written commitment to add at least one racially or ethnically diverse director at or prior to the next AGM. ISS will evaluate on a case-by-case basis whether against/withhold recommendations are warranted for additional directors at companies that fail to meet the policy for a period of over two years or more. ISS defines racial and/or ethnic diversity as "Aboriginal peoples (persons who are Indigenous, Inuit or Métis) and members of visible minorities (persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour)", which is consistent with certain definitions under the *Employment Equity Act* (Canada).

### ***Proposed Changes***

In line with the expanded interest on diversity beyond gender in recent years, in April 2023, the CSA published a notice and request for comment regarding two proposed approaches to broadening diversity disclosure requirements under NI 58-101. These two approaches are referred to as "Form A" and "Form B".

- Form A takes a more flexible approach and allows issuers to design and determine their own diversity practices and policies, without mandating disclosure regarding "identified groups" other than women (unless any data on such groups is collected). Further, Form A allows issuers to determine the membership for any "identified groups" and to continue to satisfy disclosure requirements using a wholly narrative approach. Certain securities regulators, including the Securities Commissions in Alberta, British Columbia and the Northwest Territories, have indicated support for Form A's approach.
- Form B's approach is similar to that adopted under the CBCA – it is more prescriptive and mandates disclosure on five designated groups (individuals who self-identify as women, Indigenous peoples, racialized persons, persons with disabilities and LGBTQ2SI+ persons). Unlike Form A, Form B would require issuers to provide disclosure in a standardized tabular format to facilitate consistency and comparisons. The Ontario Securities Commission has indicated support for Form B's approach.

For more information, visit our blog post [here](#). The comment period closed in September 2023. The CSA is currently reviewing stakeholder comments on the proposed amendments.

## **CSA Updates Guidance on Virtual Meetings**

In 2022, the CSA provided guidance on virtual shareholders meetings. In particular, the CSA reminded issuers that: (i) meeting materials should provide shareholders with clear and comprehensive disclosure with respect to logistical considerations; (ii) they should provide complete explanations on the registration, authentication and voting procedures for both registered and beneficial shareholders; (iii) they should disclose how shareholders' questions will be received and addressed, and any other actions that will be taken to accommodate and manage shareholder participation; and (iv) they should provide shareholders with contact information where shareholders can obtain assistance with registering for, accessing or attending a virtual meeting. For more information on the previous guidance of CSA, please see our blog post [here](#).

In the most recent update of its guidance, the CSA emphasizes that companies holding virtual shareholders meetings must clearly inform shareholders how to access, participate, and vote in the meeting. This information, explained in simple language, should be included in management information circulars and associated proxy-related materials. In particular, proxy-related materials should include:

- (a) the registration, authentication and voting process for both registered and beneficial shareholders, and how shareholders can obtain assistance in the event of difficulties during the registration, authentication and voting process; and
- (b) how shareholder participation at the virtual meeting will be accommodated and managed during the meeting, including:
  - (i) information on the procedures to allow shareholders to send or ask questions, in advance of and/or during the meeting;
  - (ii) how shareholder questions will be addressed during the meeting, or after, if there is insufficient time to address all questions at the meeting; and
  - (iii) instructions for voting at the meeting.

Companies are encouraged to simplify registration and authentication processes, and ensure the virtual platform allows for easy participation, including asking questions and raising concerns. The CSA recommends that companies take steps to ensure shareholder participation at virtual meetings is as accessible as possible, such as by:

- (a) simplifying registration and authentication procedures;
- (b) providing shareholders with opportunities to make motions or raise points of order;
- (c) ensuring shareholders have the ability to raise questions and provide direct feedback to management in any question-and-answer segment of the meeting;
- (d) indicating where shareholder proposals will be presented and voted on at the meeting, coordinating with proponents of those proposals in advance of the meeting, and ensuring proponents are given a reasonable opportunity to speak to the proposal and respond to any questions that arise from the proposal;
- (e) ensuring any virtual platform used by an issuer has functionality permitting shareholder participation to the fullest extent possible; and
- (f) ensuring the chair of the meeting is experienced and knowledgeable in the technological platform being used for the virtual meeting.

## **Additional Proxy Advisory Updates**

In addition to updates described above, Glass Lewis issued updates relating to cyber risk oversight, audit committee experience, interlocking directorships, clawback, and executive compensation.

### ***Cyber Risk***

With the growing risk of cyber-attacks and increase in regulatory oversight, Glass Lewis believes cyber risk is material for all companies, and has expanded its guidelines with respect to cyber risk oversight. In cases where a company has been materially impacted by a cyber-attack, Glass Lewis believes shareholders can reasonably expect periodic updates communicating the company's ongoing progress toward resolving and remediating the impact of the attack. Such updates can include, but are not limited to, when the company has fully restored its information system, when the company has returned to normal operations, what resources the company is providing affected stakeholders, and any other relevant information, until the impact is fully remediated. Glass Lewis may recommend voting against or withholding votes from the relevant directors should they find the board's oversight, response, or disclosures concerning cybersecurity-related issues to be insufficient or not clearly outlined to shareholders.

### ***Interlocking Directorships***

Glass Lewis generally recommends voting against or withholding votes from a director who has interlocking directorships with one of the company's executives (i.e., top executives serving on each other's boards). This year, Glass Lewis has expanded its policy to clarify that it will consider both public and private company boards when assessing interlocking relationships, and will also review on a case-by-case basis interlocking relationships with close family members of executives, within group companies, and also instances of multiple directors serving on the same boards at other companies for evidence of a pattern of poor oversight.

### ***Audit Financial Expert Designation***

At a minimum, Glass Lewis mandates that audit committees must have at least one "audit financial expert", a stricter criterion than being "financially literate" as required by applicable Canadian securities legislation. In its 2024 guidance, Glass Lewis has updated its definition of "audit financial expert" to include individuals who are: (i) chartered accountants; (ii) certified public accountants; (iii) current or former CFOs of a public company or individuals with similar corporate controller experience; (iv) current or former partners of an audit firm; or (v) those possessing analogous substantial audit expertise.

### ***Clawback***

Glass Lewis has updated its policy concerning clawback provisions, emphasizing that excessive risk-taking does not always result in financial restatements and can negatively impact shareholder value. Glass Lewis advocates for robust clawback policies that empower companies to recoup incentive compensation from executives involved in material misconduct, a material reputational failure, material risk management failure, or a material operational failure. This recovery mechanism should apply irrespective of whether an executive's employment concludes with or without cause. If a company opts not to recoup compensation, Glass Lewis expects a clear rationale and disclosure of alternative actions, such as modifying future payments.

### ***Executive Ownership Guidelines***

Glass Lewis has added a new section to its 2024 guidance to formally outline its approach to executive ownership guidelines, including a belief that companies should adopt and enforce minimum share ownership rules for named executive officers to align the interests of executive leadership and long-term shareholders. In addition, Glass Lewis requires clear disclosure in proxy statements regarding executive share ownership and how outstanding equity awards are treated when determining an executive's level



of ownership. Glass Lewis believes it is inappropriate to include unearned performance-based full value awards and/or unvested/unexercised stock options without a clear rationale.

### ***Say-on-Pay***

Glass Lewis believes say-on-pay voting proposals should be submitted annually. In 2024, Glass Lewis has added that its analysis may be affected in cases where companies in the S&P/TSX Composite Index choose not to hold a say-on-pay vote. In such cases, Glass Lewis expects to see disclosure of how the company is facilitating investor dialogue and taking shareholder feedback regarding its compensation structure into account. In cases where Glass Lewis has identified significant concerns and a company does not include a say-on-pay vote on the ballot, Glass Lewis will recommend shareholders vote against or withhold votes from the election of the compensation committee chair and/or all committee members.

### ***Clarifying Amendments***

Glass Lewis has clarified its approach to examining governance following an IPO, spin-off or direct listings. While Glass Lewis generally does not issue voting recommendations on the basis of corporate governance best practices in such cases, it may recommend voting against or withholding votes from members of the governance committee if the board of the company has approved overly restrictive governing documents. Glass Lewis may also recommend voting against or withholding votes from the chair of the governance committee of a company which has adopted a multi-class share structure within a year of an IPO, spin-off or direct listing if the board: (i) did not commit to submitting the multi-class structure to a shareholder vote at the company's first shareholder meeting following the transaction; or (ii) did not provide for a reasonable sunset of the multi-class structure (generally seven years or less).

Separately, Glass Lewis expanded the discussion regarding the use of non-IFRS/GAAP measures in incentive programs to emphasize the need for thorough and transparent disclosure in the proxy statement, such that shareholders can reconcile the difference between non-IFRS/GAAP results used for incentive payout determinations and reported IFRS/GAAP results. When significant adjustments are applied, Glass Lewis' assessment of the quality of executive pay disclosure will be impacted if there is a lack of disclosure, and may be a factor in its recommendation for the say-on-pay vote.