Matters to Consider for the 2025 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 and stock exchange rules, while taking into account 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 2025 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.

While environmental, social and governance ("**ESG**") matters remain a focus of regulators and proxy advisory firms, the momentum from prior years on these issues has slowed with growing attention turning to emerging issues such as the use and development of artificial intelligence. Additionally, regulators and proxy advisory firms continue to issue guidance on more traditional themes such as shareholder engagement and the use of virtual-only shareholder meetings, director independence, executive compensation, and disclosure of professional skills and experience of board nominees.

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 ARTIFICIAL INTELLIGENCE

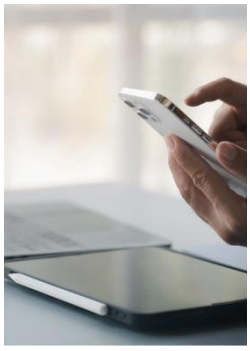
Assess governance practices and disclosure relating to the use and development of artificial intelligence ("AI") in light of guidance issued by the Canadian Securities Administrators (the "CSA") and proxy advisory firms.

With heightened investor interest in AI and its use becoming more prevalent, we expect securities regulators and proxy advisory firms to focus more attention on governance practices and disclosure relating to AI. In advance of the 2025 proxy season, the CSA and Glass Lewis issued guidance on governance issues and disclosure obligations relating to the use and development of AI. For more, please see page 2.

II. CONSIDERATIONS RELATING TO ESG DISCLOSURE

Assess ESG practices and disclosure, particularly relating to climate change and diversity.

ESG issues continue to be a focus of Canadian regulators and proxy advisory firms. Since last year's proxy season, the *Competition Act* has been updated to add new greenwashing provisions and the federal government has announced its intention to amend the *Canada Business Corporations Act* (the "**CBCA**") to include mandatory climate-related financial disclosure for all large, federally-incorporated private companies. Additionally, in light of the recent publication of by the Canadian Sustainability Standards Board of its framework on sustainability and climate-related disclosure, the CSA is expected to issue a new proposal for mandatory climate-related disclosure. Further, in late 2024 the CSA confirmed it is continuing to explore potential diversity-related disclosure requirements. For more, please see page 4.



III. CONSIDERATIONS RELATING TO THE FORMAT OF ANNUAL SHAREHOLDER MEETINGS

Consider shareholder meeting format and, if holding a virtual-only meeting, update disclosure in light of guidance from the CSA, Canadian Coalition for Good Governance ("CCGG") and proxy advisory firms.

Investors and proxy advisory firms are increasingly pushing back on virtual-only shareholder meetings citing concerns over shareholders' ability to access and participate in the meeting. Additionally, both the CSA and CCGG have issued recommendations for issuers that are holding virtual-only shareholder meetings. For more, please see page 7.

IV. PROXY ADVISORY VOTING GUIDELINES FOR 2025

Consider the impact of updates from proxy advisory firms in their 2025 proxy guidelines.

In addition to matters such as AI, board diversity and shareholder meeting format, proxy advisory firms have continued to issue guidance on more traditional themes, including director independence, executive compensation, and disclosure of professional skills and experience. For more, please see page 9.

I. ARTIFICIAL INTELLIGENCE

With the advent of AI, issuers are exploring how it can help optimize their businesses. In that context, regulators and proxy advisory firms have issued guidance reminding issuers of various governance issues and disclosure requirements that remain applicable as technological advancements continue.

CSA Guidance on AI-related Practices

On November 7, 2024, under CSA Staff Notice 51-365 – *Continuous Disclosure Review Program Activities for the Fiscal Years ended March 31, 2024 and March 31, 2023* ("**Staff Notice 51-365**"), the CSA confirmed that, where new technology such as AI is used, issuers should consider whether, under existing securities laws, they are required to provide information in their disclosure regarding how they define "AI" in their product or service, the scope of its use (including any reliance on AI), as well as any potential material risks associated with their use of AI.

With respect to the results of the CSA's disclosure review for the 2023 and 2024 fiscal years, specifically, the CSA observed various instances of "AI washing". "AI washing" refers to the making by an issuer of "false, misleading or exaggerated claims about its use of AI systems in its products or services, to capitalize on the growing use of and investor interest in AI systems". The CSA reminded issuers that all disclosure, including disclosure regarding AI, must be factual and balanced.

On December 5, 2024, the CSA published CSA Staff Notice and Consultation 11-348 – *Applicability of Canadian Securities Laws and the Use of Artificial Intelligence Systems in Capital Markets* ("**Staff Notice 11-348**"), which expanded on the guidance provided in Staff Notice 51-365 and provided additional clarity on the application of securities laws as they relate to AI-use.

Specifically, Staff Notice 11-348 reminded issuers to consider materiality when complying with their continuous disclosure obligations and emphasized various factors that they expect non-investment fund issuers to consider in meeting disclosure obligations. For example, as there is no singular approach to assessing disclosure obligations relating to AI use, issuers should avoid generic or boilerplate language. Additionally, issuers should include specific information that facilitates an investor's understanding of any material use of AI systems and related risks, including information regarding the potential impact that the use, development or dependency on AI systems may have on an issuer's business and financial condition (including its competitive position), any corporate governance risk management, controls and procedures to mitigate related risk factors, and information regarding the source(s) of data used by the AI system to perform its functions.

With respect to AI-related risk factors specifically, the CSA provided various examples to be considered by issuers, including (i) operational risks relating to disruptions, unintended consequences, misinformation and other technological issues relating to AI systems, (ii) risks relating to a reliance on AI systems offered by third party service providers, (iii) social and/or ethical risks relating to AI use, (iv) regulatory risks and risks relating to competitiveness given evolving technology and regulatory landscape, and (v) cybersecurity risks.

Finally, Staff Notice 11-348 also reminded issuers that forward-looking statements regarding prospective or future AI use remain subject to existing disclosure requirements regarding forward-looking information, including the requirement for any such statements to have a reasonable basis.

Proxy Advisory Guidance on Board Oversight of AI

Proxy advisory firms are also focused on potential governance issues relating to the use of AI. Specifically, Glass Lewis' 2025 proxy voting guidelines include a new section covering board oversight on the use of AI. In light of the rapid development and adoption of AI, Glass Lewis has confirmed that it expects issuers that use or develop AI technologies to establish a clear governance framework that takes into account ethical considerations, effectively oversees AI use or development and seeks to mitigate any related material risks. Glass Lewis has also indicated that issuers should provide clear disclosure in this regard. Additionally, boards should consider measures they can undertake to increase directors' knowledge relating to AI developments and use, including through continuous board education and/or appointing directors with AI expertise.

For the 2025 proxy season, while Glass Lewis will generally not make voting recommendations solely based on governance or disclosure issues relating to AI, it may recommend voting against individual directors if poor AI-related governance or management has resulted in "material harm" to shareholders.

II. ESG DISCLOSURE

Climate-Related Reporting

NI 51-107

Several years after the CSA first published proposed National Instrument 51-107 – *Disclosure of Climate-related Matters* ("**NI 51-107**"), there remain no mandatory climate-specific disclosure requirements for Canadian public companies. Recent developments suggest that major regulatory changes could be announced in 2025. In the meantime, issuers should bear in mind 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.

On June 26, 2023, the International Sustainability Standards Board issued two inaugural International Financial Reporting Standards ("**IFRS**"), IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information* and IFRS S2 *Climate-related Disclosures* ("**IFRS S2 Standards**" and collectively, the "**ISSB Standards**"). While remaining voluntary in Canada, IFRS S1 and S2 became effective for annual reporting periods beginning on January 1, 2024. The ISSB Standards call for disclosure of certain sustainability and climate-related risks and opportunities, including those 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 December 18, 2024, the Canadian Sustainability Standards Board (the "**CSSB**") released its own framework on sustainability and climate-related disclosure for Canadian entities, in the form of CSDS 1 *General Requirements for Disclosure of Sustainability-related Financial Information* and CSDS 2 *Climate-related Disclosures* (the "**CSSB Standards**"). As with the ISSB Standards, the CSSB Standards (which are based on the ISSB Standards) are voluntary and provide a framework for disclosure of sustainability and climate-related risks and opportunities that are reasonably expected to impact the prospects of Canadian entities. The CSSB Standards call for disclosure of certain risks and opportunities to investors, lenders, creditors, and other stakeholders, such as those that are reasonably expected to affect cash flow, access to finance, and cost of capital of the business.

Following the finalization of the CSSB Standards, the CSA announced that it continues to work towards a revised climate-related disclosure rule (which will be published for public comment once available) that will consider the CSSB Standards, with any modifications it considers appropriate for the Canadian capital markets. The CSA also noted that it is continuing to monitor international developments related to climate-related disclosure, including in the United States, where the Securities and Exchange Commission's final rules on climate-related disclosure have been voluntarily stayed since April 2024, pending resolution of ongoing litigation.

Proxy advisory firms remain similarly focused on climate-related disclosures. For example, Glass Lewis confirmed that, for the 2025 proxy season, when assessing climate-related disclosure of TSX 60 companies with "material exposure to climate risk stemming for their own operations", as well as companies where it believes "emissions or climate impacts, or stakeholder scrutiny thereof, represent an outsized, financially material risk," it will consider whether the disclosure aligns with either the recommendations of the Task Force on Climate-related Disclosure or IFRS S2 Standards.

Proposed Amendments to the CBCA

On October 9, 2024, the Canadian federal government announced its intention to amend the CBCA to introduce mandatory climate-related financial disclosure requirements for all large, federally-

incorporated private companies. No information regarding the timing or substance of these amendments has been provided at this time.

Greenwashing

Amendments to the Competition Act

On June 20, 2024, the *Competition Act* was amended to introduce, among other things, anti-greenwashing provisions. These amendments prohibit (i) product-specific environmental representations that are not based on an adequate and proper test, and (ii) business-wide environmental representations that are not based on adequate and proper substantiation in accordance with an internationally recognized methodology. On December 23, 2024, the Competition Bureau published draft guidelines (the "**Guidelines**") in order to provide guidance on its enforcement approach to these greenwashing provisions. Under the Guidelines, the Competition Bureau acknowledged the potential overlap of securities regulations and the greenwashing provisions under the amended *Competition Act* with respect to securities filings. As such, the Guidelines indicate that the Competition Bureau's focus is aimed at representations in the marketing or promotional context rather than representations made "exclusively" for other purposes, such as to investors and shareholders in the context of securities filings. How the Competition Bureau will differentiate between the purposes of various representations remains to be seen.

CSA Guidance

As set out in Staff Notice 51-365, the CSA continued to observe an increase in instances of "greenwashing" and re-affirmed the requirement for issuers to ensure that all ESG related disclosures, including voluntary disclosures, are factual and balanced. In particular, the CSA reminded issuers that, when using broad ESG-related terms (including any ratings in respect of ESG impact), which may have multiple interpretations, sufficient additional details must be included to avoid misleading investors. Further, with respect to any forward-looking ESG-related statements (such as future targets or plans), the CSA reiterated that these statements must have a reasonable basis and otherwise comply with existing disclosure obligations relating to forward-looking information, generally.

Diversity Disclosure

The CSA's 10th annual Review of Disclosure Regarding Women on Boards and in Executive Officer Positions (the "**Review**") revealed a positive and upward trend in women's representation when compared to the 2023 review. In the Review, the CSA confirmed that it is continuing to explore potential diversity-related requirements as outlined in their proposed amendments to Form 58-101F1 of National Instrument 58-101 - *Disclosure of Corporate Governance Practices* and National Policy 58-201 - *Corporate Governance Guidelines* (the "**Proposed Amendments**"). For additional details regarding the Review and the Proposed Amendments, please refer to our 2024 blog post and our 2023 blog post, respectively.

Updates to ISS 2025 Voting Guidelines

Institutional Shareholder Services' ("**ISS**") 2025 voting guidelines provide the same recommendation as the 2024 voting guidelines with respect to gender diversity on boards, which is to withhold votes for the chair of the nominating committee (or equivalent if there is no nominating committee) when women representation on the board falls below 30% for companies in the S&P/TSX Composite Index and, in the case of other TSX-listed companies, if they have no women on the board (the "**Gender Recommendation**"). However, ISS has revised the exemptions to the Gender Recommendation for the 2025 proxy season such that companies are no longer required to demonstrate "extraordinary circumstances" for failing to hit the Gender Recommendation. Instead, an exemption will be available (i) in the case of companies in the S&P/TSX Composite Index, if they publicly committed in writing to

achieve the 30% representation of women on the board at or prior to the next AGM and (a) they joined the S&P/TSX Composite Index and were not previously subject to the Gender Recommendation or (b) they currently fall below 30% representation after achieving this goal at the preceding AGM and (ii) in the case of all other TSX-listed companies, if they (a) previously had a woman director at the preceding AGM and (b) provide a publicly disclosed written commitment to add at least one woman to the board at or prior to the subsequent AGM.

ISS also updated its 2025 guidelines to introduce a stricter approach to racial and ethnic diversity for companies in the S&P/TSX Composite Index. In 2024, ISS would not generally recommend a vote against or withholding a vote from the chair of the nominating committee (or equivalent, if there is no nominating committee) if there was no "apparent racially or ethnically diverse member on the board" – i.e. no board members who are Indigenous, Inuit, Métis, non-Caucasian in race or non-white in colour (the "**Racial/Ethnic Recommendation**") if the company publicly disclosed a written commitment to add at least one racially or ethnically diverse director to the board at the next AGM. For 2025, ISS will generally recommend a vote against or withholding a vote from the chair of the nominating committee (or equivalent, if there is no nominating committee) if the company does not meet the Racial/Ethnic Recommendation unless the company has publicly disclosed a written commitment to add at least one racially or ethnically diverse director to the board at the next AGM and (i) the company recently joined the S&P/TSX Composite Index and was not previously subject to the Racial/Ethnic Recommendation or (ii) the company has ceased to satisfy the Racial/Ethnic Recommendation after meeting the requirements at the previous AGM.

III. FORMAT OF ANNUAL SHAREHOLDER MEETINGS

Since 2020, virtual meetings have gained traction in Canada, especially as a result of the challenges posed by the COVID-19 pandemic. However, despite the various health authorities eliminating restrictions on in-person gatherings starting in 2022, many issuers have continued to hold or have adopted virtual-only shareholder meetings. Laurel Hill reports that in the 2024 proxy season, among S&P/TSX Composite Index issuers, 53% held virtual-only meetings (2023: 57%), 25% held in-person only meetings (2023: 25%) and 22% held hybrid meetings (2023: 19%). While issuers cite certain benefits to virtual-only meetings, such as worldwide shareholder participation, simplified logistics, reduced costs and a reduced carbon footprint, market participants are increasingly raising their concerns with respect to virtual-only meeting formats. In particular, there are concerns that virtual shareholder meetings can make shareholder access and participation difficult, and that issuers can use virtual platforms to avoid or limit shareholder interactions.

In 2022, the CSA issued guidance on virtual meetings, which is summarized in our March 2022 blog post (accessible here). In 2024, the CSA provided further guidance on the use of virtual shareholder meetings and emphasized that issuers holding virtual shareholder meetings must clearly inform shareholders how to access, participate and vote in the meeting in their proxy-related materials. The CSA also encouraged companies to take steps to ensure shareholder participation. For further information on the CSA's updated guidance on virtual shareholder meetings, please see page 6 of our 2024 Proxy Season Update (accessible here).

Investors have also expressed concerns with the holding of virtual shareholder meetings and have increasingly pushed back on such meeting formats. For example, in April 2024, the British Columbia General Employee's Union ("**BCGEU**"), together with 37 other institutional investors and service providers representing a combined C$1.7 trillion in assets under management, became signatories to an investor statement addressed to S&P/TSX 60 Index companies. In the related media release, the BCGEU called for issuers "to act immediately to safeguard shareholder rights at shareholder meetings," and characterized the guidelines included in the statement as "modest and actionable guidelines to align virtual meetings with the participative standard of in-person events".

Similarly, while the CCGG, a shareholder advocacy group, recognizes the benefits that virtual-only shareholder meetings can present to shareholders, it also notes in its January 2024 virtual shareholder meeting policy that, "absent strong governance and a commitment to transparency, virtual-only meetings create a clear and present risk" for silencing of shareholders. The CCGG continues to advocate for the use of in-person meetings and views hybrid meetings as the preferred format.

In its policy guidelines, the CCGG recommended that issuer boards seeking to incorporate a virtual component in shareholder meetings:

1. use a hybrid meeting format;
2. use accessible video platforms that facilitate virtual shareholder access, voting and real time participation;
3. facilitate real-time shareholder participation that allows for communication among shareholders as well as between shareholders and the company's board and management, without motions, questions or other feedback being subject to prior management vetting;
4. provide clear and thorough instructions in proxy materials for registration, authentication and voting, especially for beneficial shareholders; and
5. ensure the Chair of the meeting is well-versed in meeting rules and exercises their discretion in a manner that promotes transparency and accountability to shareholders.

In light of these sentiments, it may come as no surprise that, in the 2024 proxy season, Laurel Hill determined that shareholder proposals relating to virtual meetings had the strongest support out of all shareholder proposals in Canada, despite management opposition. Seven out of 13 proposals to hold annual shareholder meetings in person (with virtual meetings being in addition to, not in replacement of, in-person meetings) passed, with 57.3% average support among shareholders.

Proxy advisory firms are also focused on potential issues relating to virtual meetings. Specifically, in its 2025 guidelines, Glass Lewis clarified its expectation that issuers actively engage with their shareholders regarding the use of virtual-only shareholder meetings and that issuers provide a rationale if they opt to hold a virtual-only shareholder meeting. While Glass Lewis does not currently have a benchmark policy voting recommendation based solely on the meeting format chosen, it may recommend that shareholders vote against the re-election of the governance committee chair or other accountable directors in egregious cases where the board has failed to address shareholder concerns. Glass Lewis also reminded issuers that it expects robust disclosure in the proxy material assuring shareholders that they will have the same rights to participate in a virtual-only shareholder meeting as they would at an in-person meeting. Insufficient disclosure in this regard may result in a negative voting recommendation.

Similarly, ISS has updated its benchmark policy for 2025 to confirm that it will generally recommend voting against proposals to adopt or amend articles/by-laws that give the board of a company discretion to hold virtual-only meetings without a compelling rationale. As with the concerns summarized above, ISS' rationale for this position is centered on the potential for virtual-only shareholder meetings to contribute to "an erosion of shareholder rights".

Given the growing push-back on virtual-only meetings, issuers should give serious consideration to the format of their annual meetings for the 2025 proxy season. Issuers choosing to hold a virtual-only meeting should ensure their proxy materials contain clear instructions for registration, authentication, and voting and use a platform that facilitates shareholder participation.

IV. ADDITIONAL PROXY ADVISORY UPDATES

In addition to the recommendations described above, proxy advisory firms have also issued updates relating to director independence, executive compensation, and disclosure of professional skills and experience.

Non-Independent Non-Executive Directors

ISS has updated the definition of non-independent non-executive directors so that a former chief executive officer ("CEO") of an issuer will generally not be considered independent, irrespective of the time period since the director ceased to be a CEO. However, in exceptional circumstances ISS may reassess a former CEO's independence after a minimum five year cooling off period. This is in contrast to its 2024 policy where ISS generally viewed a former CEO as independent after a five-year cooling off period.

Relatedly, ISS' updated guidelines indicate that it will now recommend withholding votes for any director who has served as a former CEO that is a member of the audit or compensation committee, unless the former CEO has been classified as independent by ISS.

Executive Compensation

For the 2025 proxy season, ISS has indicated that, in exceptional circumstances, ISS may elect to use a non-CEO named executive officer's ("**NEO**") compensation in its pay-for-performance evaluation where it determines doing so would provide "a more appropriate assessment of pay-for-performance alignment." Such circumstances could include, for example, circumstances where such NEO's compensation is significantly higher than that of the company's CEO.

Glass Lewis has also updated its guidelines with respect to executive compensation, providing clarifying amendments relating to its review of executive pay programs and highlighting the holistic approach it takes in its reviews. Glass Lewis emphasizes that it reviews executive pay programs on a case-by-case basis (i.e., without a pre-determined scorecard), with unfavourable factors being reviewed "in the context of rationale, overall structure, overall disclosure quality, the program's ability to align executive pay with performance and shareholder experience, and the trajectory of the pay program" resulting from a company's proposed changes.

Disclosure of Professional Skills and Experience

Glass Lewis has updated the section titled "Professional Skills and Experience" of its guidelines to highlight the importance of disclosing board nominees' key skills and experience in their proxy filings. For companies included in the S&P/TSX 60, Glass Lewis may recommend voting against the chair of the nominating committee if it determines that there is insufficient disclosure in this regard.