The Canadian Securities Administrators Proposes Mandatory Climate-Related Disclosure for Reporting Issuers

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Summary

- The Canadian Securities Administrators (the "CSA") have published a notice and request for comment on proposed National Instrument 51-107 – *Disclosure of Climate-related Matters* (the "Proposed Instrument") and its companion policy, which would establish mandatory climate-related disclosure requirements for reporting issuers in Canada largely premised on the framework developed by the Task Force on Climate-Related Financial Disclosures (the "TCFD").

- The Proposed Instrument would apply to all reporting issuers (other than investment funds and certain specified issuers) and, consistent with the TCFD framework, the required disclosure would fall into four broad categories: Governance; Risk Management; Strategy; and Metrics and Targets.

- "Governance" and "Risk Management" disclosure would be compulsory. "Strategy" and "Metrics and Targets" disclosure would only be required where such information is material.

- The Proposed Instrument is not anticipated to come into force prior to December 31, 2022 and a one-year transition period would apply in respect of non-venture issuers; three years for venture issuers. Assuming the Proposed Instrument comes into force December 31, 2022, then for issuers with a December 31 year-end, the proposed requirements would apply to annual filings due in March 2024, for non-venture issuers, and annual filings due in March 2026, for venture issuers.

- The deadline for public comment on the Proposed Instrument is January 17, 2022.

Background

In response to investor demand in recent years for more transparent and consistent disclosure of environmental, social and governance ("ESG") matters, certain third-party frameworks have emerged as benchmarks for companies seeking to voluntarily develop their ESG disclosure. In particular, the Global Reporting Initiative ("GRI") framework, the standards developed by the Sustainability Accounting Standards Board (the "SASB"), and, specifically for climate change, the framework developed by the TCFD, are now commonly used for voluntary ESG disclosure. For further discussion regarding the emergence of these disclosure standards, please see our May 14, 2020 Blog Post.

The CSA has previously acknowledged investors' interest in environmental disclosure and the existence of independent reporting frameworks, beginning with Staff Notice 51-333 *Environmental Reporting Guidance*, published in October 2010. The CSA subsequently conducted a review of issuers' climate change risk disclosure, culminating in Staff Notice 51-354 *Report on Climate Change-related Disclosures Project*, published in April 2018, and Staff Notice 51-358 *Reporting of Climate Change-related Risks*, published in August 2019 (collectively, the "Staff Notices"). In Spring 2021, the CSA conducted a further review of

climate-related disclosures of 48 large Canadian issuers, primarily from the S&P/TSX Composite Index (the "Disclosure Review"). The Disclosure Review found that, when compared to the 2017 review findings, issuers are providing more climate-related disclosure in their continuous disclosure filings and voluntary reports. Even so, while 92% of these issuers provided some form of voluntary climate-related disclosure, the Disclosure Review noted that such information was often boilerplate, vague or incomplete. In addition, many issuers referenced more than one independent framework, with 70% of issuers referencing the GRI framework, 57% referencing the SASB standards and 55% of issuers referencing the TCFD.

The Proposed Instrument reflects the CSA's embrace of the global trend towards consistent and comprehensive climate-related disclosure. At the 26th United Nations Climate Change Conference of Parties, the International Financial Reporting Standards ("IFRS") Foundation announced the creation of the International Sustainability Standards Board (the "ISSB"). The ISSB is tasked with developing a comprehensive, global baseline of sustainability-related disclosure standards, including the consolidation of the SASB and other existing frameworks. Notably, while the ISSB headquarters will be located in Frankfurt, its second office will be located in Montreal, with responsibility for supporting key functions of the ISSB and facilitating the cooperation of regional stakeholders. The CSA expressed its support for the establishment of the ISSB and contemplates that it will result in standards that are complementary to the Proposed Instrument.

The Proposed Instrument is also being released in the context of similar regulatory initiatives in other jurisdictions, including in the United States, the United Kingdom, the European Union, Australia, New Zealand, and Switzerland. In Canada, the Proposed Instrument comes after the Government of Ontario's Capital Markets Modernization Taskforce released its final report in which it recommended, after extensive stakeholder consultations, mandating climate-related disclosure that is compliant with the TCFD recommendations. Against this backdrop, the Proposed Instrument demonstrates the CSA's commitment to mandatory climate-related disclosure and reflects the growing convergence around the TCFD recommendations as the global benchmark.

Summary of Required Disclosure

Core Element	Required Disclosure	Materiality Threshold?	Location of disclosure
Governance	Describe: • the board's oversight of climate-related risks and opportunities; and • management's role in assessing and managing climate-related risks and opportunities.	No materiality threshold – must be disclosed	Management information circular ("MIC") If no MIC, annual information form ("AIF") If no MIC or AIF, annual management's discussion and analysis ("MD&A")

Risk Management	Describe: • the issuer's processes for identifying and assessing climate-related risks; • the issuer's processes for managing climate-related risks; and • how processes for identifying, assessing and managing climate-related risks are integrated into the issuer's overall risk management.	No materiality threshold – must be disclosed	AIF If no AIF, annual MD&A
Strategy	Describe: • the climate-related risks and opportunities the issuer has identified over the short, medium, and long term; and • the impact of climate-related risks and opportunities on the issuer's businesses, strategy, and financial planning.	Disclosure only required if the information is material	AIF If no AIF, annual MD&A
Metrics and Targets	Describe: • the metrics used by the issuer to assess climate-related risks and opportunities in line with its strategy and risk management process where such information is material; • the targets used by the issuer to manage climate-related risks and opportunities and performance against targets where such information is material; and • Scope 1, Scope 2 and Scope 3 greenhouse gas ("GHG") emissions, and the related risks, or the issuer's reasons for not disclosing this information (see further details below).	Disclosure only required if the information is material	AIF If no AIF, annual MD&A

Greenhouse Gas Emissions Disclosure

In the current draft of the Proposed Instrument, issuers would be required to use a "GHG emissions reporting standard" to calculate and disclose their Scope 1, Scope 2 and Scope 3 GHG emissions, or explain why they have not done so.

A GHG emissions reporting standard is defined as the GHG Protocol, being the greenhouse gas reporting standards developed by the World Resources Institute and the World Business Council for Sustainable Development, or a comparable reporting standard. The GHG Protocol categorizes emissions from a company's operations into three scopes:

- Scope 1 – direct emissions from sources owned or controlled by the company;
- Scope 2 – indirect emissions from the generation of purchased energy. Scope 2 emissions physically occur at the facility where electricity is generated; and
- Scope 3 – indirect emissions as a result of an organization's operations but which are not owned or controlled by the company.

Modifications to the TCFD Framework

The Proposed Instrument differs from the TCFD framework in three notable respects:

- there is no requirement for issuers to describe the resilience of their strategic plans, taking into consideration a range of climate-related scenarios, including a 2˚ scenario;
- the CSA have adopted a "comply or explain" approach to GHG disclosure. Issuers must disclose their GHG emissions and the related risks, or the issuer's reasons for not disclosing this information; and
- the CSA have introduced a materiality threshold with respect to the "Strategy" and "Metrics and Targets" disclosure, limiting the application of these sections to those issuers for whom such information is material.

These modifications reflect the CSA's efforts to balance the importance of consistent, comparable and decision-useful disclosure with issuer concerns regarding regulatory burden and additional cost.

Existing Disclosure Requirements

Issuers are reminded that existing disclosure requirements continue to apply and are not modified by the Proposed Instrument, including material risk factor disclosure in an issuer's MD&A and AIF.

If you have any questions about disclosure by reporting issuers generally or sustainability disclosure in particular, please contact any member of our Corporate Finance & Securities Group.