A Changing Climate around Reporting: Canadian Securities Regulator Provides Guidance on Reporting Climate Change-Related Risks

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November 29, 2019

INVESTORS SEEK IMPROVED CLIMATE CHANGE-RELATED RISK REPORTING

Concern for climate change-related impacts on businesses is growing rapidly. Extreme weather events and long-term shifts in climate patterns have significant implications for businesses that can affect products and services. Extreme weather and shifting climate patterns affect available shipping routes, cause weather delay, can result in flooding at storage facilities and limit the availability of resources. Managing the risks of climate change is now a mainstream business issue across a broad range of industries.

Yet, according to investors, the continuing disclosure documents of public issuers do not adequately reflect the significance of climate change-related risks.[1] In a study conducted by the Canadian Securities Administrators ("CSA"), 22% of issuers provided boilerplate disclosure. Another 22% provided no climate change-related disclosure at all.[2] Most investors surveyed by the CSA were dissatisfied with the current state of climate change-related disclosure.[3]

Investors are demanding improved disclosure on the material risks, opportunities, financial impacts, and governance processes related to climate change.[4] In response, the CSA released new guidance on climate change-related risk reporting in Staff Notice 51-358 *Reporting of Climate Change-Related Risks* ("Notice").

This article reviews the guidance set out in the Notice to help issuers understand their obligations to report material climate change-related risks and satisfy investors.

[1] Canadian Securities Administrators, Staff Notice 51-354 *Report on Climate Change-related Disclosure Project* dated April 5, 2018 at 16.
[2] *Ibid*. at 12.
[3] *Ibid* at 18.
[4] *Ibid* at 3.

CLIMATE CHANGE-RELATED REPORTING REQUIREMENTS

Securities legislation in Canada requires reporting issuers to disclose climate change-related information in an issuer's regulatory filings if such information is material.[5] However, climate change-related risks can be difficult to identify. The lack of a common framework for measuring the impacts of climate change is a primary reason why issuers do not disclose these risks.[6]

The Notice attempts to provide issuers with a functional approach to preparing disclosure of material climate change-related risks.[7] The Notice expands upon the guidance provided in CSA Staff Notice 51-333 *Environmental Reporting Guidance* and should be read in conjunction with that notice.[8] The Notice does not create any legal requirements. However, the Notice will assist companies to satisfy investor demands to evaluate and understand climate change risks.

THE NOTICE CLARIFIES REPORTING REQUIREMENTS

The Notice provides guidance on several issues, including:

1 Assessing the materiality of climate change-related risks

2 Types of climate change-related risks

3 Voluntary disclosure requirements, and

4 Forward-looking climate change-related information.

1. ASSESSING MATERIALITY

Issuers must disclose information in their continuous disclosure if the information is material.[9] Information is likely material if "a reasonable investor's decision whether to buy, sell or hold securities in an issuer would likely be influenced or changed if the information in question was omitted or misstated."[10]

The Notice sets out guiding principles for assessing materiality:

- There is no bright line test for materiality

- Context is important – materiality must be considered in light of all the facts

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[5] *Ibid* at 4. Many disclosure requirements relating to environmental matters are found in the principal rules governing continuous disclosure, including National Instrument 51-102 *Continuous Disclosure Obligations*, National Instrument 58-101 *Disclosure of Corporate Governance Practices*, National Instrument 52-110 *Audit Committees* and National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*.

[6] *Ibid* at 14.

[7] Canadian Securities Administrators, Staff Notice 51-358 *Reporting of Climate Change-Related Risks*, dated August 1, 2019 at 1.

[8] *Ibid*.

[9] *Ibid* at 6.

[10] *Ibid*.

- Materiality is dynamic and depends on the prevailing conditions at the time of reporting, and

- The time horizon of a trend, demand, commitment, event, or uncertainty may be relevant.[11]

In addition to considering the existence of material climate change-related risks, the Notice encourages issuers to quantify and disclose the potential financial impacts of such risks.[12]

2. TYPES OF CLIMATE CHANGE-RELATED RISKS

To help issuers identify climate change-related risks, the Notice categorizes the types of risks that businesses may face as either physical risks or transitional risks. Physical risks may be acute (e.g. extreme weather events) or chronic (e.g. long-term shifts in climate patterns).[13] Transitional risks include reputation, market, regulatory, policy, legal, and technologic risks.[14]

The Notice provides examples of risks in each category and links them to potential operational and financial impacts that may affect disclosure requirements. The Notice also sets out factors that issuers should consider when assessing the materiality of each category of risk.

3. VOLUNTARY DISCLOSURE

Issuers may voluntarily disclose climate change-related information in addition to their required disclosure. When voluntarily disclosing information, issuers must keep in mind that:

- Securities legislation requires material information to be disclosed in regulatory filings – it is insufficient for material information to be contained in voluntary disclosure only

- Voluntary disclosure should not contain misrepresentations as it may be subject to provisions in securities legislation regarding civil liability for secondary market disclosure, and

- Voluntary disclosure should not obscure material information.[15]

4. FORWARD-LOOKING INFORMATION

Issuers may include forward-looking information in their disclosure, such as a target to reduce greenhouse gas emissions. If an issuer discloses forward-looking information, they must comply with certain requirements, including:

- Identifying the information as forward-looking

- Providing cautionary language

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11 *Ibid* at 7–8.
12 *Ibid* at 9.
13 *Ibid* at 10.
14 *Ibid* at 11.
15 *Ibid* at 15.

- Stating the material factors or assumptions underlying the information, and

- Updating previously disclosed forward-looking information and describing the issuer's policy for updating such information.[16]

WILL IMPROVED REPORTING AFFECT INVESTORS' DECISIONS?

The Notice provides guidance to clarify climate change-related reporting to help issuers deal with the uncertainty that climate change poses for businesses. It will be interesting to see whether issuers incorporate this guidance into their reporting practices and whether improved disclosure will affect investors' choices.

For additional guidance on climate change-related reporting requirements, see the Notice.

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Document #: 1634377

[16] *Ibid* at 16.