

Canadian Securities Administrators' proposed climate-related disclosure requirements

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In recent years, shareholder and stakeholder activism has led to an increased focus on companies' performance and disclosures on environmental, social and governance (ESG) issues. However, there has been no explicit, specific requirement to provide disclosure on environmental matters. Where issuers provide such disclosure voluntarily, there are a number of frameworks and standards to assess and disclose climate-related information that they may use, such as those from the Global Reporting Initiative and the Sustainability Accounting Standards Board. Given the lack of uniformity across the frameworks and standards, investors are often left with limited and inconsistent information.

It looks as though that is about to change. The Canadian Securities Administrators (CSA) recently proposed National Instrument 51-107 Disclosure of Climate-related Matters and companion policy (the Proposed Instrument and Policy, respectively) that will establish a regime in which climate-related disclosures will be presented in a consistent format and within consistent parameters related to governance, strategy, risk management, metrics and targets. With the introduction of mandatory climate-related disclosures, reporting issuers will have to turn their minds to how they communicate with market participants about this important issue.

Purpose: providing consistent, comparable and decision-useful information

The proposed climate-related disclosure requirements largely mirror the recommendations from the Task Force on Climate-related Financial Disclosures (TCFD). They are intended to align Canadian disclosure standards with the expectations of international investors, to provide investors with comparable and consistent information, as well as to streamline disclosure frameworks and standards.

Key requirements: disclosing information related to four main themes

The disclosure requirements are set out in Part 2 of the Proposed Instrument, Form 51-107A and Form 51-107B and would apply to reporting issuers (with limited exceptions).

The disclosure requirements can be categorized into the four core elements of the TCFD recommendations:

1. The governance requirements relate to board and management oversight of climate-related risks and opportunities (Form 51-107A).
2. The strategy requirements relate to the issuer accounting for the impact of client-related risks and opportunities within their business, strategy and financial planning over the short, medium and long term. However, issuers will not be required to describe the resiliency of the issuer's strategy, taking into consideration different climate-related scenarios, including a 2 C or lower scenario (as recommended by the TCFD) (Form 51-107B).
3. The risk management requirements relate to issuers' processes for identifying, assessing and managing climate-related risks within overall risk management (Form 51-107B).
4. The metrics and targets requirements relate to disclosing metrics and targets used to assess climate-related opportunities and targets. Notably, issuers will be required to disclose their greenhouse gas (GHG) emissions and the related risks or the reasons for not disclosing this information (Form 51-107B).

The Proposed Instrument defines GHG emissions as "Scope 1," "Scope 2" or "Scope 3" depending on their source of production. The CSA is also consulting on whether to require issuers to disclose Scope 1 GHG emissions when that information is material, or in all cases.

The Proposed Instrument will not override or modify existing disclosure requirements under Canadian securities legislation. In fact, certain disclosure requirements in the Proposed Instrument are consistent with pre-existing requirements. For example, the CSA highlighted that the requirement described in the "strategy requirement" bullet above relating to describing identified climate-related risks and opportunities over the short, medium, and long term is consistent with the risk factor disclosure required under National Instrument 51-102 Continuous Disclosure Obligations.

Scope: the 'materiality' assessment varies based on theme

For the requirements under "governance" and "risk management," issuers must provide the disclosures in the applicable continuous disclosure document as required by the Proposed Instrument. However, the requirements under "strategy" and "metrics and targets" are only required where such information is material — meaning that it would likely influence or change a reasonable investor's decision whether to buy, sell or hold securities in an issuer if omitted or misstated.

Prepare for the future to mitigate risks and costs

The Proposed Instrument and Policy align with the increasing push for responsible business conduct globally, while also providing investors with more reliable information, particularly on ESG issues. However, for issuers, the mandatory climate-related disclosures will come with additional regulatory burdens and costs and the potential for increased litigation risk.

While the Proposed Instrument and Policy will be phased in with non-venture issuers subject to a one-year transition phase and venture issuers subject to a three-year transition phase, issuers should begin integrating climate-related discussions and policies within their business operations. In doing so, issuers will remain competitive and forward-thinking as investors, and particularly institutional investors, become increasingly interested in the implications of climate change.

Given the significant implications, issuers should consider offering their feedback on the

Proposed Instrument and Policy during the comment period, which expires on Jan. 17, 2022.

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