The CSA Releases Additional Guidance on Disclosure of Climate Change-Related Risks

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Investors, particularly institutional investors, are increasingly paying closer attention to the financial implications of climate risks on their portfolio firms. Large investors are using multiple channels to engage with issuers over climate risks, such as discussions with management, submitting shareholder proposals on climate-risk issues and proxy voting against management because of climate-risk concerns.

In response to inconsistent disclosure practices of climate change-related risks among issuers, on August 1, 2019, the Canadian Securities Administrators (the CSA) released CSA Staff Notice 51-358 Reporting of Climate Change-related Risks (the Staff Notice). The Staff Notice provides additional guidance for senior management and boards of public companies on disclosure of climate change-related risks.

The Staff Notice builds upon CSA Staff Notice 51-333 *Environmental Reporting Guidance*. Together, the two notices provide reporting issuers with specific guidance relating to environmental matters but do not create any new legal requirements. They simply clarify existing continuous disclosure requirements under securities legislation, particularly for issuers' Management Discussion & Analysis (MD&A) and Annual Information Forms (AIF), in the context of environmental matters.

Potential Climate Change-Related Risks

Exposure to climate change-related risk is not limited to carbon-intensive industries. The Staff Notice groups climate change-related risks into two broad categories: physical risks, and transition risks.

Physical risks may be acute, such as extreme weather events, or longer-term chronic changes in climate. The Staff Notice provides examples of operational and financial impacts issuers should consider, including potential supply chain disruptions, physical asset damage and availability of insurance.

The categories of transition risks the Staff Notice provides include:

- **Reputational risks** as a result of stakeholder perceptions of the way the issuer may be contributing to or hindering the transition to a low-carbon economy;

- **Market risks** associated with shifts in supply and demand for certain commodities, products and services as a result of shifts in customer preferences;
- **Regulatory risks** arising from increased regulation of greenhouse gas emissions or increased costs of climate change-related risk disclosure;
- **Policy risks** resulting from policy actions that seek to mitigate or adapt to the effects of climate change, such as energy efficiency policies or sustainable land-use practices;
- **Legal risks** arising from increased expenses due to legal claims or penalties;
- **Technology risks** an issuer may face when low emission technologies disrupt the issuer's industry, including the costs of investing in new technology.

Most industries have exposure to climate change-related risks, and all issuers should consider these and other relevant risks in determining whether a certain climate change-related risk should be disclosed.

The Role of the Board and Management

In fulfilling their roles in strategic planning, risk management and review of an issuer's public disclosure, boards and management are encouraged to assess their expertise and make informed decisions on disclosure of climate change-related risks. The CSA suggests boards and management focus their attention on the following:

- **Using a broader assessment of potential risk** The CSA emphasizes the need for boards and management of issuers to engage in an assessment as to the materiality of certain climate change-related risks despite the potential uncertainties and longer time horizon associated with these types of risks.
- **Avoiding boilerplate disclosure** Of a sample of 78 TSX issuers, the CSA found that 22 per cent provided boilerplate disclosure on climate change-related risks and another 22 per cent provided no disclosure at all. The CSA encourages management and boards to prepare and approve risk disclosure that is relevant, clear and entity-specific.

Determining the "Material" Information

Materiality is the determining factor in assessing whether information must be disclosed as part of an issuer's continuous disclosure obligations. The guidance provided to issuers in determining what is material and should be included in MD&A or an AIF is whether a reasonable investor's decision to buy, sell or hold securities would likely be influenced or changed if the information in question was omitted or misstated.[2] Securities laws prohibit issuers from making statements that the issuer knows (or reasonably ought to know) are materially misleading or untrue.

The CSA emphasizes that this general test is context-specific, and issuers, including those in non-carbon intensive industries, should consider the following when assessing climate change-related risk:

- **Timing** Even if a climate change-related matter may only materialize over the medium- or long-term, or if there is uncertainty as to whether it will actually occur, the matter should be disclosed if it would likely influence a reasonable investor's decision whether or not to buy, sell or hold securities. Uncertainty of the risk

actually occurring should only influence whether the matter is material, not whether it should be assessed as to its materiality.
- **Context** While individual facts pertaining to a climate change-related risk may not appear to be material on their own, materiality must be assessed in light of all of the available facts.
- **Measurement** Instead of simply disclosing the existence of risk, the CSA encourages issuers to quantify potential financial and other impact(s) of such risks, including their magnitude and timing.

Voluntary Disclosure

If issuers choose to voluntarily disclose climate change-related information in their continuous disclosure or other publications such as reports, the issuer's website or social media posts, the CSA reminds issuers of the basic considerations they should take into account:

- Material information that is required to be disclosed under securities legislation must be disclosed in regulatory filings and cannot be contained only in voluntary disclosure. Voluntary disclosure should be consistent with information in an issuer's continuous disclosure filings.
- Voluntary disclosure should not contain any misrepresentations, as they may also be subject to civil liability for secondary market disclosure. The CSA states that issuers should have a robust process in place for reviewing voluntary disclosure prior to its public release to ensure its accuracy.
- Voluntary disclosure should not obscure material information.

Forward-Looking Information

If an issuer discloses any forward-looking information (FLI) pertaining to climate-related matters, the basic securities law requirements continue to apply. These requirements include:

- identifying the information as FLI;
- providing cautionary language;
- stating the material factors or assumptions used to develop the FLI; and
- updating certain previously disclosed FLI and describing the issuer's policy for updating FLI.[3]

Contact Us

If you have any questions about this bulletin, please contact one of the authors or any other member of BLG's Securities, Capital Markets and Public Companies Group or Environmental, Municipal, Expropriation and Regulatory Group.

[1] Krueger, Philipp and Sautner, Zacharias and Starks, Laura T., "The Importance of Climate Risks for Institutional Investors" (June 5, 2019). Swiss Finance Institute Research Paper No. 18-58.

[2] See Part 1(f) of Form 51-102F1 and Part 1(e) of Form 51-102F2.

[3] See section 5.8 of NI 51-102.

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