

Where is Canada on climate change disclosure? More guidance; but old rules

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Demands for better reporting on climate change risks and opportunities by investors and the public have been increasing, prompting the Canadian Securities Administrators in March 2017 to launch a climate change disclosure review. One result of that review was the issuance on August 1, 2019 of [CSA Staff Notice 51-358 *Reporting of Climate Change-related Risks*](#) [PDF] (the Staff Notice). The Staff Notice provides guidance, but the CSA has chosen not to make any changes to existing requirements for disclosure, although the door is left open for changes in the future. We highlight the key takeaways of the Staff Notice.

Key takeaways:

- CSA believes disclosure can be improved
- There are no changes to existing disclosure requirements
- Relevance of “materiality” to climate change-related disclosure
- Guidance on assessing “materiality” for long-term, hard to quantify risks
- Voluntary disclosure must be subject to the same rigour as mandated disclosure
- No guidance on how the prohibition on providing forward-looking information unless there is a reasonable basis for it impacts climate change-related disclosure

Improving disclosure

The CSA was prompted to launch its review as a result of expressed interest of institutional investors and several international initiatives launched to improve the quality of climate change disclosure, including the Climate Risk Technical Bulletin of the Sustainability Accounting Standards Board and the final recommendations of the Financial Stability Board's Task Force on Climate-Related Financial Disclosures. The CSA believes many issuers, including those in non-carbon intensive industries, are or will be exposed to climate change-related risk, although the risks will affect issuers, even within the same industry, in different ways. As previously noted in [CSA Staff Notice 51-354 *Report on Climate change-related Disclosure Project*](#) [PDF] (the Report), a review of disclosure provided by 78 issuers found that 22% provided no climate change-related risk disclosure and 22% provided only boilerplate disclosure.

The CSA emphasized that relevant, clear and understandable entity-specific disclosure will help investors understand how the issuer's business is specifically affected by all material risks resulting from climate change and provide context for investors about how the board and management assess climate change-related risks.

There are no changes to existing disclosure requirements

In the Report, the CSA announced that it (i) would develop guidance and educational initiatives with respect to the business risks and opportunities and potential financial impacts of climate change and (ii) intended to consider proposed new disclosure requirements in the following areas:

- disclosure of issuers' governance processes in relation to material risks and opportunities, including the board's responsibility for oversight and the role played by management; and
- disclosure of how the issuer oversees the identification, assessment and management of material risks.

The Staff Notice provides guidance, including guidance on how management and the board should assess an issuer's climate change-related risks and opportunities and questions for boards and management to ask regarding the issuer's approach to disclosure of such risks and opportunities. However, the Staff Notice does not prescribe any particular approach and does not require issuers to disclose their governance processes in relation to material risks and opportunities, including climate change-related ones. Instead, the Staff Notice references the applicability of, and expands upon, guidance provided by the CSA in 2010 in [CSA Staff Notice 51-333 *Environmental Reporting Guidance*](#) [PDF].

Relevance of “Materiality” to climate change-related disclosure

The Staff Notice confirms that disclosure is to be based on whether the information is “material” to the issuer. That is, whether the information is likely to influence or change a reasonable investor's decision whether to buy, sell or hold the issuer's securities.

The determination that management and the board of the issuer are to focus on what is material with respect to a reasonable investor's investment decisions with respect to the particular issuer is important. Institutional investors wishing to assess climate change risks to their portfolio of investments may wish to obtain specific information from all reporting issuers. Indeed, a number of environmental and social measurement and ranking services have evolved to address the differing needs and interests of institutional investors in assessing such risks. However, if the chosen metrics are not material to one or more reporting issuers, it will not be possible to obtain standardized information needed to properly assess risks across the portfolio and make comparisons between issuers.

Guidance on assessing “materiality” for long-term, hard to quantify risks

While there is no change to the definition of “material” or to the standard for when disclosure is required in the context of climate change-related risks, the CSA is concerned that some issuers are not applying sufficient rigour to the materiality analysis when concluding that the issuer faces no material exposure to climate change-related risks. To remedy this, the CSA provides guidance on how to conduct a materiality assessment in the face of the uncertainty and longer-term horizon of many climate change-related risks and opportunities.

In the CSA's view, the issuer must assess the materiality of longer-term risks, not just near-term ones and, wherever practical, should quantify and disclose the potential financial and other material impact(s) of such risks, including their magnitude and timing. The CSA cites four principles for making materiality assessments:

1. **No bright line test** – There is no uniform quantitative threshold or bright-line test for assessing materiality.
2. **Context** – Materiality has to be assessed contextually, and some facts may be collectively material even if they are immaterial individually.
3. **Timing** – The assessment must consider whether the fact may reflect a potential trend that might make early disclosure of the matter important to reasonable investors, such as where an issuer is in an industry with a longer operation or investment cycle or where new technologies are going to be required.
4. **Trends, demands, commitments, events and uncertainties** – Assessments are to reflect an analysis of both (a) the probability that a trend, demand, commitment, event or uncertainty will occur and (b) the magnitude of its effect.

In the CSA's view, the timing of realization of the risk and the uncertainty of it occurring may impact the analysis of whether the matter is material but not whether it needs to be considered and analyzed as to materiality.

In assessing climate change-related risks, management and boards are encouraged to consider the financial implications of:

- the **physical risks** of climate change, including acute (i.e., event-driven) or chronic changes in resource availability and climate patterns, including their impacts on sourcing, safety, supply chains, operations and physical assets;
- the **transitional risks** arising from a gradual change to a low-carbon environment, including reputational risks, market risks, regulatory risks, policy risks, legal risks and technology risks
- **opportunities** which may become available as a result of efforts to mitigate and adapt to climate change

The CSA includes suggested questions for management to consider in assessing climate change-related risks and their impacts.

Voluntary disclosure must be subject to the same rigour as mandated disclosure

In addition to disclosure of material information in an issuer's continuous disclosure filings required under securities legislation, issuers may provide information in other materials provided voluntarily by the issuer. The CSA cautions that when doing so

- issuers ensure all material information is contained in the issuer's continuous disclosure filings;
- any voluntary disclosure should be consistent with the information included in the issuer's continuous disclosure;
- voluntary disclosure should not contain any misrepresentations – and since voluntary disclosure may give rise to liability for misrepresentations under statutory civil liability provisions of Canadian securities legislation, management and boards should have a robust process for reviewing the information prior to release to ensure it is reliable and accurate;

- voluntary disclosure should not obscure material information; and
- if the issuer's disclosure of climate change-related risks and opportunities constitutes forward-looking information (FLI), the issuer must comply with the requirements for disclosure of FLI, even if the information is provided voluntarily. (The CSA notes that these include identifying the information as FLI, providing cautionary language, stating the material factors or assumptions used to develop the FLI and updating previously disclosed material FLI and describing the issuer's policy for updating FLI).

No guidance on how the prohibition on providing forward-looking information unless there is a reasonable basis for it impacts climate change-related disclosure

Section 4A.2 of National Instrument 51-102 prohibits issuers from disclosing FLI, whether in the issuer's continuous disclosure filings or in its voluntary disclosure, unless the issuer has a reasonable basis for it. The Staff Notice does not expressly reference this prohibition, its implications for disclosure of climate change-related risks and opportunities or what constitutes a reasonable basis for disclosure of FLI climate change-related information. Instead, issuers are left with the unhelpful statement that securities law requirements for disclosure of FLI do not relieve issuers from disclosing material climate change-related risks even if they are expected to occur or crystallize over a longer time frame. While the process of quantifying the financial impacts of physical risks, transitional risk and opportunities arising from climate change for purposes of the materiality assessment should generally satisfy the requirement for having a reasonable basis for FLI climate change-related information, it will still be necessary to consider whether there is a reasonable basis for disclosure of FLI climate change-related information before it is made.

Conclusion

In the Report, the CSA noted that users' interest in climate change-related risks and opportunities and disclosure practices will continue to evolve. The CSA committed to monitor developments and disclosure to determine whether securities law requirements also need to evolve. The Staff Notice provides guidance to issuers on conducting a rigorous assessment of the materiality of the implications of climate change to the risks and opportunities facing their business. While the Staff Notice does not include new disclosure requirements, the CSA indicates that it will continue to monitor disclosure of climate change-related matters, leaving open the possibility of changes in mandated disclosure rules in the future.