

Torys on Developments in Climate Change Disclosure Requirements

CC 2008-4
February 28, 2008

Investors and securities regulators are increasingly paying attention to what public companies are disclosing about their climate change risks and opportunities. Securities regulators in Ontario and Alberta are scrutinizing environmental disclosure in general and, in the United States, the SEC has been pressured by both institutional investors and a U.S. Senate sub-committee to focus on climate change disclosure. More significantly, voluntary disclosure initiatives are proliferating as a result of pressure from institutional investors and other stakeholders. Although there is no standard Canadian market practice on climate change and GHG emissions disclosure, by carefully considering climate change-related risks and opportunities in the context of securities laws and by monitoring existing voluntary initiatives, issuers will be in a better position to make prudent carbon disclosure decisions.

Securities Law Disclosure Obligations

Canadian securities laws may, in certain circumstances, require issuers to consider climate risk in their continuous disclosure filings. National Instrument 51-102, *Continuous Disclosure Obligations*, requires issuers to disclose in their Management's Discussion and Analysis (MD&A) any known trends, demands, commitments, events or uncertainties that are reasonably likely to affect the issuer's business or that management reasonably believes will materially affect the issuer's future performance. In addition, an issuer must discuss in its Annual Information Form (AIF) material information regarding

- the financial and operational effects of environmental protection requirements on the capital expenditures, earnings and competitive position of the issuer in the current financial year and the expected effect in future years;
- environmental policies fundamental to an issuer's operations and the steps taken to implement them; and
- risk factors and regulatory constraints that would be likely to influence investor decision making.

The materiality standard for disclosure for these purposes is consistent with that contained in the *Handbook* of the Canadian Institute for Chartered Accountants (CICA). In a 2005 brief, "[MD&A Disclosure about the Financial Impact of Climate Change and Other Environmental Issues](#)," the CICA stated, "Climate change and other environmental issues should be disclosed and discussed if they either have, or are reasonably likely to have, a current or future effect, direct or indirect, on the entity's financial condition, changes in financial condition, results of operations, liquidity, capital expenditures or capital resources that is material to investors."

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The information disclosed in an issuer's MD&A and AIF will depend on the issuer's exposure to the physical impacts of climate change and applicable climate change regulation. Although for many issuers the immediate consequences of climate change and its regulation may remain remote, other issuers may now determine that there is material information to be disclosed, given the scientific consensus on the problem, the introduction of carbon taxes and GHG emission regulations in certain jurisdictions and the imminent introduction of GHG emission and other regulations in other jurisdictions.

Canadian securities regulators have provided little specific guidance on climate change disclosure. However, the Continuous Disclosure Review Team of the Ontario Securities Commission (OSC) recently undertook a targeted review of disclosure of environmental-related matters, and the Alberta Securities Commission has signalled its intent to focus on environmental disclosure. In its report, issued February 27, 2008, the OSC staff reported on its findings and recommendations following a review of the environmental disclosure of 35 reporting issuers regarding, among other things, the AIF requirements referred to above. Although the report does not specifically address climate change, it is nevertheless useful in its guidance. In particular, the OSC indicated that issuers should include a quantification of the costs associated with environmental protection requirements, which could extend to such matters as GHG emissions regulations and carbon taxes, and the impact or potential impact of these costs on financial and operational results. With respect to environmental policies that an issuer identifies as fundamental to its operations, the OSC stated that the issuer should evaluate and describe the impact or potential impact these policies may have on its operations, including quantitative information where that is reasonably available. Similarly, the OSC stated that if any risks relating to environmental laws are material to an issuer's operations, the issuer should include a detailed discussion of these laws, including whether or not the issuer is in compliance and any costs of compliance.

In the United States, there is heightened momentum on climate change disclosure. On September 18, 2007, a broad coalition of institutional investors formally petitioned the SEC to issue an interpretive clause clarifying that material climate-related information be included in MD&A and other periodic disclosure under existing reporting requirements. Following a hearing on climate change disclosure, the Senate Sub-committee on Securities, Insurance and Investment sent a letter to the SEC on December 6, 2007 requesting it to provide "definitive guidance in the form of an interpretive release to ensure greater consistency and completeness in disclosure of material information related to climate change and current and probable future governmental regulation of greenhouse gas emissions; provide information for registrants on whether and how to disclose such matters; and ensure that investors have access to material climate change information."

Voluntary Climate Change Disclosure Initiatives

Investors have taken specific additional initiatives to increase climate change disclosure by issuers. In October 2006, a group of leading institutional investors established the [Global Framework for Climate Risk Disclosure](#). It describes a set of principles and information that investors often consider when analyzing an investment's climate risks, including the investment's current and historical GHG emissions, its climate change policy and any corporate and operational steps it has taken to reduce identified risks. The Framework encourages companies to engage in the disclosure of this information through mandatory financial reporting (described above) and voluntary reporting mechanisms, such as the [Carbon Disclosure Project](#) (CDP) and [Global Reporting Initiative](#) (GRI).

The CDP now represents investors with over US\$57 trillion in assets under management, including major Canadian financial institutions and pension plans. Some of the world's largest companies have answered

its annual questionnaire, including 383 of the world's FT500 companies for its fifth report, CDP5. On October 10, 2007, the Canadian version of CDP5 was launched with the support of 88 companies on the Toronto Stock Exchange. The report disclosed that Canadian companies are beginning to take action on climate change with 70% of respondents measuring and reporting their own direct and indirect greenhouse gas emissions, 64% of them instituting a GHG Emissions Management System, and 58% having their boards of directors responsible for climate initiatives. The CDP6 survey was sent to more than 3,000 companies on February 1, 2008 and the results will again be released this fall.

More recently, on February 4, 2008, three large U.S. banks, Citi, JPMorgan Chase and Morgan Stanley, announced "The Carbon Principles" to provide guidance to energy companies in managing carbon risks. The Principles result from a nine-month consultation with seven of the largest power companies in the United States. The principles include greater emphasis on energy efficiency and renewable/low-carbon energy technologies, as well as better risk analysis for conventional forms of energy generation. This effort sets the stage for the development of a consistent approach among major lenders and advisers in evaluating climate change risks and opportunities in the U.S. electric power industry, and could ultimately be emulated across other sectors in the near future.

Voluntary initiatives like the ones discussed above normally propose that issuers deal with the following general areas:

- Assessing their "carbon footprint";
- Analyzing the risks and opportunities presented by climate change; and
- Managing these risks and opportunities.

Protocols and standards are developing to assess carbon footprints. One of the most widely used standards for GHG emissions reporting is the [Corporate Accounting and Reporting Standard](#) (revised edition) of the Greenhouse Gas Protocol, developed by the World Business Council for Sustainable Development. Another widely used standard is ISO 14064 GHG Accounting and Verification Standard, which has been adopted by the Canadian Standards Association. **1**