Canadian Mandatory Climate Disclosure Rules In The Forecast

Several important developments relating to mandatory climate-related disclosures at home and abroad occurred in 2024. However, questions remain regarding the timeline and content of the mandatory climate-related disclosure regime for Canadian public companies.

The Canadian Sustainability Standards Board (CSSB) is expected to issue a final version of its Canadian climate-related disclosure standards in December 2024. The Canadian Securities Administrators (CSA) previously indicated that its proposed mandatory securities law disclosure rules will be informed by the CSSB’s rule-making, so a CSA proposal is likely to follow in 2025. However, significant uncertainty persists regarding the content of the CSA’s proposed rule. For example, it is not clear whether the rule will cover scope 3 greenhouse gas (GHG) emissions. The rules in Europe, Australia and the frameworks from the International Sustainability Standards Board (ISSB) and CSSB require scope 3 emissions disclosures. By contrast, the United States Securities and Exchange Commission (SEC) dropped mandated scope 3 disclosure from its final rule earlier this year.

Public companies in Canada should continue to prepare to respond to mandatory climate-related disclosure. While the CSSB final rules will likely provide a roadmap for climate-related disclosures, organizations will need to closely monitor developments from the CSA. Companies should also be mindful of the potentially unexpected application to their operations of climate-related disclosure obligations from other jurisdictions.

Background to climate-related disclosure requirements

For several years, companies in Canada and abroad have published information about the interplay between climate change and their businesses. This information has typically been included in voluntary disclosure such as sustainability reports. These are typically prepared separately from mandatory securities law filings for which companies are exposed to liability.

Securities regulators have periodically reminded companies that climate change may have material impacts on their businesses that should be addressed in their securities law filings. Nonetheless, to date, securities laws have not been prescriptive about specific climate-related disclosure obligations. As a result, the content, format and location of climate-related reporting has varied from company to company. This makes it difficult to compare the impacts of climate-related risks on different companies' businesses. It is also challenging to understand how boards of directors and management are managing those risks. Securities regulators are now seeking to change the landscape.

Leading the charge – international and U.S. approaches

Over the past year, there have been a number of significant developments in global regulators' efforts to mandate standardized and comparable climate-related disclosures by public companies. In March 2024, the SEC finalized its rules.

These rules would apply to larger U.S. public companies. At the same time, securities regulators in more than 20 countries, including Canada, have finalized or are currently in the process of finalizing their own mandatory climate-related disclosure rules for public companies. Most of these are based upon the framework issued by the ISSB.

These developments have stirred up controversy. Some investors maintain that rules providing comparability are required at a very detailed level to allow them to assess climate-related risks. On the other hand, many companies contend that they are challenged by already onerous disclosure requirements and that mandatory, granular climate-related disclosures will entail unreasonable expense and resources. They also note that requirements are likely to generate information that is imprecise and therefore of questionable value. Companies also express concern that disclosure about uncertain future events could make them a target for litigation if those projections turn out to be incorrect.

Almost immediately after the SEC’s rules were finalized, a barrage of lawsuits prompted the SEC to suspend the rules pending the outcome of the litigation. It remains uncertain how this will play out, particularly with the upcoming change of administration resulting from the recent U.S. general election.

The Canadian perspective

There are many questions about the implications for Canada.

The CSSB is leading the charge. Its mandate is to tailor the international sustainability reporting framework created by the ISSB to serve the Canadian public interest. In March 2024, the CSSB released for public comment its version of a climate-related disclosure framework, CSDS 2 – *Climate-related Disclosures.* CSDS 2 is effectively a mirror-image of the ISSB framework with a slightly longer phase-in schedule. Complying with the CSSB framework will not be compulsory. However, the CSA has publicly stated that it intends to consider the CSSB’s final framework when it creates mandatory climate-related disclosure rules for Canadian public companies. The CSA has indicated that it may depart from the CSSB framework where it considers appropriate to do so.

Not surprisingly, public comments on the CSSB’s proposed framework spanned from fully supportive to highly critical. Some aspects of the CSSB’s proposal do not appear to be particularly controversial, such as requirements for disclosing governance processes for monitoring, managing and overseeing climate-related risks and opportunities, describing relevant climate-related risks and opportunities, and describing the strategies for dealing with those risks and opportunities. Other aspects of the proposed framework, however, have sparked intense debate.

Two of the principal disclosure concerns identified are the requirements for scope 3 GHG emission reporting and scenario analysis. Scope 3 requirements mandate disclosure of the GHG emissions that run up and down a company’s value chain. For example, scope 3 emissions cover emissions from upstream and downstream transportation, employee commuting, business travel, and use of sold products, among 10 other categories. Proponents of scope 3 reporting note that these emissions usually make up the majority of a company’s carbon footprint. Opponents cite the imprecision inherent in delineating the scope of the value chain and the measurement uncertainty for scope 3 calculations. Scope 3 reporting also requires significant resources to collect and prepare the information.

Scenario analysis requires a company to assess its strategic and operational climate resiliency under certain scenarios. Supporters of this requirement cite the importance of understanding business model effects under different scenarios of climate-related changes. Opponents point to the lack of standardization for scenario analysis, the resulting uncertainty and the significant costs of preparation. The SEC did not require either scope 3 disclosure or scenario analysis in its final rules.

Climate-related disclosures rely heavily on estimates and third-party information. These disclosures are also inherently future-oriented. The SEC and other jurisdictions have provided robust forward-looking disclosure safe harbours for this information.

While final details of Canada's climate-related reporting framework remain to be mapped, there is little doubt that Canadian companies will soon be confronted with a mandatory obligation to disclose the impact of climate on their businesses.

One challenge for the Canadian market is that, in comparison to some other international jurisdictions, there are significantly fewer large issuers that have the financial resources to comply with the most burdensome climate-related disclosure requirements. The CSSB framework, however, does not provide specific exemptions for smaller- and medium-sized enterprises (SMEs). Among the large number of SME public companies in Canada, many have voiced concerns that SMEs with limited personnel and resources will be disproportionately affected and should be relieved of the more onerous aspects of climate-related disclosures. The SEC's rules exempt from GHG emissions disclosures companies that are not accelerated filers or large accelerated filers.

The public comment period for the CSSB proposals ended in June and the final version of the standards is expected to be issued in December 2024. At that point, attention will shift to the CSA, as its climate-related disclosure requirements will be mandatory. The CSA will be closely reviewing the public comments that the CSSB received on its framework. It remains to be seen whether the CSA will follow the CSSB proposals, more closely align with the SEC (given the interconnectedness of the U.S. and Canadian markets) or chart its own path.

The climate disclosure rules, in whatever form they take, are likely to affect more than just Canadian public companies. Many private companies will also soon find that they are asked to provide information that their public company customers require in order to comply with their climate-related disclosure obligations. The Canadian federal government has also highlighted plans to amend the *Canada Business Corporations Act* to require climate-related financial disclosures by large, federally incorporated companies, regardless of whether they are public. The details remain to be determined, but more obligations may be on the way.

Other oversight of climate disclosure – greenwashing

In addition to climate-related disclosure requirements, organizations need to be mindful that climate-related public statements are attracting the attention of regulators. A prominent example is the enactment of “anti-greenwashing” measures in amendments to the *Competition Act*. The amendments seek to combat climate-related misrepresentations when promoting products or business activities. For more on those developments, refer to our *Osler Legal Outlook* article.

Looking ahead

While final details of Canada’s climate-related reporting framework remain to be mapped, there is little doubt that Canadian companies will soon be confronted with a mandatory obligation to disclose the impact of climate on their businesses. This will mark a significant change to existing continuous disclosure processes for many companies. Issuers are well-advised to advance their preparations now, even as we await those final details.

There are many steps that organizations can take now to prepare. First, organizations can consider the current approach to board or committee oversight of climate matters and determine whether to make changes to roles, responsibilities and the related committee charters. Companies can also identify and engage external service providers who will assist with climate-related reporting, which may include GHG footprint consultants, assurance providers and legal counsel.

On the financial side, finance teams can assess necessary changes to existing disclosure controls and procedures, as well as internal controls over financial reporting, to ensure the timeliness, quality and reliability of climate reporting. This will allow teams to implement systems to ensure close collaboration between accounting, finance and sustainability teams.

Issuers can also engage with stakeholders about their expectations as part of the ordinary course of investor relations engagement. The feedback can be factored into plans for climate-related oversight and reporting. After a very busy 2024 that saw the advance of frameworks for climate-relating reporting internationally and the narrowing of topics that may require Canada-specific customizations, we anticipate that 2025 will provide much greater clarity for Canadian companies and investors regarding their climate disclosure obligations, which should inform their action plans.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Authors: John Valley, Jason Comerford

Osler, Hoskin and Harcourt LLP