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Climate-related Disclosure for Energy Companies

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Climate-Related Disclosure

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Mandatory Climate Disclosure

Climate-Related Disclosure

Proposed National Instrument 51-107 *Disclosure of Climate-related Matters*

- **Disclosure Requirements:** Based on the four pillars of the TCFD recommendations.

  1. Governance
  2. Strategy
  3. Risk Management
  4. Metrics and Targets

- **GHG emissions disclosure**: "*Comply or explain*" approach to disclosure of Scope 1, Scope 2 and Scope 3 emissions.

- **Key Differences from TCFD Recommendations**:

  1. No requirement to disclose scenario analysis.
  2. No mandatory GHG emissions disclosure.
  3. GHG emissions can be reported using a standard other than the GHG Protocol.

- **Location of Disclosure** – circular (governance), AIF or MD&A (strategy, risk management, metrics and targets).

- **Phased-In Implementation** – over one year for non-venture issuers and over three years for venture issuers.

Climate-Related Disclosure

ISSB Proposals

- Similar, but slightly more detailed climate risk governance-related disclosure
- Disclosure with annual financial information
- Disclose Scope 1, Scope 2 and Scope 3 emissions (short transitional relief for Scope 3 emissions)
- GHG Protocol for calculating emissions
- Use scenario analysis to evaluate resiliency of strategy to climate-related changes and uncertainties (guidance being provided on scenario analysis methodology)

Climate-Related Disclosure

Best Practices

1. Boards of directors should expressly establish oversight of climate-related risk and opportunities of the issuer.

2. Boards of directors should expressly task management with responsibility for assessing and managing climate-related risks and opportunities.

3. Boards of directors should consider board committee roles in the review and assessment of climate-related risks.

4. Boards of directors should specifically consider the role of the audit committee in the review and assessment of climate-related risks and opportunities.

5. Boards of directors should be aware that the Climate Disclosure Proposals require climate-related disclosure to be contained in documents that by law specifically must be reviewed and approved by the board.

6. Boards of directors will need to assess the materiality of climate-related risks and opportunities.

Climate-Related Disclosure

Best Practices Cont.

7. Boards of directors should develop a familiarity with the TCFD recommendations.

8. Boards of directors should consider the need for scenario analysis as contemplated within the TCFD recommendations.

9. Boards of directors will need to consider the annual timing of preparation of an issuer’s climate-related disclosure.

10. Boards of directors should consider any *de facto* requirement to disclose GHG emissions.

11. Boards of directors should consider whether the issuer should start early in addressing the disclosure contemplated by the Climate Disclosure Proposals.

12. Boards of directors need to understand the impact of the Climate Disclosure Proposals on their prospectus-related liability.

13. Boards of directors will need to monitor the development of climate disclosure ratings and rankings established by third parties.

Greenwashing

Greenwashing

Regulatory Complaints: Targeting Fossil Fuel Advertising

- ***Competition Act* and the Competition Bureau**
  - Address false or misleading representations and deceptive marking practices in promoting the supply or use of a product or any business interest, with all representations that are misleading or false in a material respect being subject to the *Competition Act*

- **NGOs typically spearhead the complaints**
  - Greenpeace
  - Canadian Association of Physicians for the Environment (CAPE)

Greenwashing

In Advertising

- “In the UK, 1.4 million households use 100% renewable electricity.”
- “Our experts are working on a wind project that could power six million homes.”
- “Nearly one in five new cars now plug in.”
- “These chargers are popping up on our streets.”
- “We aim to fit 50,000 chargers nationwide by 2025.”
- “And with more electric car charge points coming to forecourts near you, the UK is ready for cleaner energy.”
- “Our renewable electricity is supplied by the National Grid and certified by Renewable Energy Guarantees of Origin, matching electricity bought with the equivalent amount from 100% renewable sources.”

Greenwashing in Advertising

“We are developing biofuels and synthetic fuels to achieve net zero emissions.”

Greenwashing

Complaints in the Courts

- A wave of recent lawsuits in the United States allege greenwashing and corresponding breach of consumer protection laws against energy companies
- Allegations include statements that oil majors have repeatedly taken public positions that contradict the climate science developed internally
- To date, defences have largely focused on jurisdiction issues and whether state or federal courts are better placed to hear the claims
- The scope of defendants in climate litigation has been expanded recently to include directors, although a recent decision from the English High Court highlights the strong deference that Courts have given to the business judgment rule

Greenwashing

Best Practices

1. Only make statements that can be supported by facts and corporate activities.

2. Support any forward-looking statements with an identification of material risk factors that could cause actual results to differ materially, material factors or assumptions used to develop the forward-looking statement, and policies for updating the information.

3. Avoid broader, more general or absolute claims which are much more likely to be seen as inaccurate or to mislead.

4. Where claims are only true if certain conditions or caveats apply, those conditions or caveats should be clearly stated.

5. If vague claims such as “environmentally friendly”, “ecological” and “green” are used, they should be reserved for products or services whose life cycles have been thoroughly examined and verified.

6. Any details provided to substantiate claims should include how particular aspects of sustainability are being measured and evaluated.

7. To the extent any ratings agency is used to measure a particular issuer’s exposure to ESG risk, the actual rating should be disclosed and should be clear as to what specific set of criteria the rating is based on and what, if any, third party certified the rating.

Questions?

Thank you

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