

Climate change disclosure – Reporting under securities legislation

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OSC

ONTARIO SECURITIES COMMISSION

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Overview of presentation

- **Disclosure of environmental matters (including climate change)**
 - What information is required to be disclosed?
 - Meaning of “material information”
 - Disclosure requirements
 - Who reviews, approves and certifies information?

- **Current initiative**
 - Laurel Broten resolution
 - Recommendations for “next steps” on environmental disclosure
 - SEC guidance issued January 2010

Meaning of “material information”

- **“Reasonable investor test”**
 - Is it information that would likely influence or change a reasonable investor’s decision to buy, sell or hold securities in the issuer if the information was omitted or misstated?
 - Yes → then likely material

- **Issuer’s responsibility for making materiality assessments**
 - TSX-listed issuer
 - Required to establish and maintain disclosure controls and procedures
 - Include controls and procedures designed to ensure that information required to be disclosed in regulatory filings is accumulated and communicated to management to allow timely decisions regarding required disclosure



Environmental disclosure requirements

- **National Instrument 51-102 Continuous Disclosure Obligations**
 - Form 51-102F1 Management's Discussion & Analysis (MD&A)
 - Form 51-102F2 Annual Information Form (AIF)

- **OSC Staff Notice 51-716 Environmental Reporting**
 - February 27, 2008
 - Summarizes results of compliance review with requirements in NI 51-102 and provides guidance

Environmental disclosure requirements

- **Five key disclosure requirements**

- Risks related to climate change
- Trends and uncertainties
- Environmental liabilities
- Environmental protection requirements
- Environmental policies

Risks related to climate change

- **Disclosure of risk factors relating to issuer and its business**
 - Item 5.2, Form 51-102F2 Annual Information Form
 - Can include risks relating to climate change
 - Physical risks
 - ➔ Severity of weather, sea levels, arability of farmland and water availability
 - Climate change litigation risks
 - Regulatory risks
 - ➔ Impact of pending or existing legislation or international accords
 - Other risks
 - ➔ Changes in consumer demand, increased competition to develop new technology, increased insurance premiums and deductibles

Trends and uncertainties

- **How issuer performed through eyes of management**
 - Material information not fully reflected in financial statements
 - Important trends and risks that have affected financial statements or are reasonably likely to affect them in future
 - Analysis of operations, including commitments, events, risks or uncertainties that management reasonably believes will materially affect issuer's future performance
 - Part 1(a) and Item 1.4(g), Form 51-102F1 Management's Discussion & Analysis

Trends and uncertainties (con't)

- **What is the impact of climate change matters on revenues, expenditures and cashflows?**
 - Revenues
 - Changes in consumer demand due to perceptions of GHG emissions
 - Changes in supply chain requirements due to GHG emissions
 - Obtaining regulatory environmental approvals
 - Expenses
 - Need to retrofit property, plant and equipment to reduce GHG emissions
 - Rebuilding of facilities impacted by adverse weather events
 - Purchase and implementation of new information systems to measure and record GHG emissions
 - Investments in “green” technologies

Environmental liabilities

- **Liabilities not reflected in financial statements**
 - Long-term or contingent
 - Individually may not be material, but together may indicate underlying risk or trend that could be material

- **Liabilities accrued in financial statements**
 - TSX-listed issuers
 - If critical accounting estimate involved, disclosure about estimate
 - Methodology and assumptions
 - Any known trends, commitments, events or uncertainties management reasonably expects to materially affect methodology or assumptions
 - Significance to issuer's financial condition, changes in financial condition and results of operations
 - Item 1.12 of Form 51-102F1 Management's Discussion & Analysis

Environmental protection requirements

- **Financial and operational effects of environmental protection requirements**
 - On capital expenditures, earnings and competitive position
 - In current financial year and future years
 - Item 5.1(1)(k) of Form 51-102F2 Annual Information Form
- **Discussion should include**
 - Quantification of costs associated with environmental protection requirements where reasonably available and would provide material information
 - Impact of costs on financial and operational results
- **Example: capital expenditures for environmental control facilities**

Environmental policies

- **Environmental policies fundamental to operations**
 - Description of policies and steps taken to implement them
 - “Policy” should be read broadly
 - Policies on issuer’s relationship with environment
 - ➔ may include reduction in GHG emissions
 - Provides insight into how issuer is managing certain risks
 - Discussion may include
 - Purpose of policy (including risks designed to address)
 - Costs associated with policy where reasonably available and would provide material information
 - Item 5.1(4) of Form 51-102F2 Annual Information Form

Concerns regarding disclosure

- **Identified by investors and other stakeholders**
 - Found in multiple sources: MD&A, AIF, information circulars and voluntary reports
 - Not necessarily complete or reliable
 - Often “boilerplate” that does not provide meaningful information to investors
 - Often not provided in a form that facilitates comparisons among issuers
 - If information is not included in securities regulatory filings, it is not necessarily provided on a timely basis
 - Often not integrated with financial reporting, nor is it typically audited or verified by an external party

Review, approval and certification

- **Audit committee review**
 - Review financial statements and MD&A before publicly disclosed

- **Board approval**
 - Approve financial statements and MD&A before filed with securities regulator
 - May delegate approval of interim filings to audit committee

- **CEO and CFO certification**
 - Certify, among other things, that financial statements and other financial information included in MD&A and AIF (if applicable) fairly present, in all material respects, issuer's financial condition

Underlying controls for disclosure

■ Audit committee responsibilities

- Satisfied adequate procedures in place for review of issuer's public disclosure of financial information extracted or derived from financial statements

■ CEO and CFO certifications

- Designed disclosure controls and procedures
 - ➔ Reasonable assurance that information required to be disclosed in regulatory filings is recorded, processed, summarized and reported within time periods specified
- Designed internal control over financial reporting
 - ➔ Reasonable assurance regarding reliability of financial reporting and preparation of financial statements for external purposes

International Financial Reporting Standards (IFRS)

- **IFRS changeover date: Financial years beginning on or after January 1, 2011**

- **IFRS contain differences from Canadian GAAP for recognition and measurement of provisions, including environmental provisions**
 - When provision exists
 - Recognition threshold
 - Amount to be accrued
 - Note disclosure requirements

- ➔ Issuers may potentially be required to accrue more environmental liabilities, at higher amounts, and provide more disclosure regarding these liabilities

Resolution passed by Ontario legislature

- **Private member's resolution introduced by MPP Laurel Broten**
 - Approved by Ontario legislature on April 9, 2009

- **Called on OSC to:**
 - Conduct consultation to establish best practice corporate social responsibility and environmental, social and governance reporting standards
 - Develop and adopt enhanced standardized reporting framework
 - Report to Minister of Finance by January 1, 2010 with recommendations for "next steps" to enhance disclosure

Response to resolution

■ Mandate

- review existing disclosure requirements under Ontario securities legislation for reporting issuers (other than investment funds) regarding corporate governance and environmental matters
- consult with investors, issuers, advisors and other stakeholders on these matters, and
- make recommendations to the Ontario Minister of Finance by January 1, 2010 regarding “next steps” to enhance disclosure of these matters, if determined necessary and appropriate.

OSC recommendations

- **December 18, 2009**
 - Report to Minister of Finance
 - OSC Notice 51-717 Corporate Governance and Environmental Disclosure
- **Key recommendation regarding environmental reporting**
 - Provide additional staff guidance for issuers on existing environmental disclosure requirements in 2010
- **Based on consultations with stakeholders**
 - Roundtable on September 18, 2009
 - OSC Continuous Disclosure Advisory Committee and Securities Advisory Committee
 - Individual consultations

SEC climate change guidance

- **Interpretative release**

- Approved by SEC – January 27, 2010
- Effective date - February 8, 2010

- **Four areas where climate change may trigger disclosure under existing framework**

- Impact of existing or pending climate change legislation or regulation
- Risks or effects of climate change-related international accords or treaties
- Actual and potential indirect consequences of climate change-related regulation or business trends
- Actual and potential physical impacts of climate change

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