

SEC proposes new climate change disclosure: changes for Canadian listed issuers

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What you need to know

On March 21, 2022 the U.S. Securities and Exchange Commission (SEC) released a proposed rule (the Proposed Rule) outlining disclosure requirements for registrants in respect to climate change. In addition to our Canadian clients that have cross-border operations, Canadian listed issuers will want to pay close attention to developments at the SEC given that the Canadian Securities Administrator (CSA) is set to publish its new National Instrument regarding climate change disclosure.

Proposed rule to follow TCFD recommendations

It will come as a welcome relief to many investors and some registrants that the Proposed Rule aligns with the recommendations established by the Task Force on Climate Change-related Financial Disclosures (TCFD). As we have outlined in [previous publications](#), the TCFD Recommendations have become the internationally accepted reporting framework for climate related risks and opportunities. The Proposed Rule will include key aspects of the TCFD Recommendations.

The table below shows reporting requirements that align with the TCFD Recommendations based on the SEC’s fact sheet:

TCFD Recommendations	SEC Proposed Rule
Governance: Disclose the organization’s governance around climate-related risks and opportunities.	
Describe the board’s oversight of climate-related risks and opportunities.	The oversight and governance of climate-related risks by the registrant’s board and management.
Describe management’s role in assessing and managing climate-related risks and opportunities.	See above.

<p>Strategy: actual and potential impacts of climate-related risks and opportunities on the organization’s businesses, strategy, and financial planning where such information is material.</p>	
Describe the climate-related risks and opportunities the organization has identified over the short, medium, and long term.	How any climate-related risks identified by the registrant have had or are likely to have a material impact on its business and consolidated financial statements, which may manifest over the short-, medium-, or long-term.
Describe the impact of climate-related risks and opportunities on the organization’s businesses, strategy, and financial planning.	How any identified climate-related risks have affected or are likely to affect the registrant’s strategy, business model, and outlook.
Describe the resilience of the organization’s strategy, taking into consideration different climate-related scenarios, including a 2°C or lower scenario.	If the registrant uses scenario analysis to assess the resilience of its business strategy to climate-related risks, a description of the scenarios used, as well as the parameters, assumptions, analytical choices, and projected principal financial impacts.
<p>Risk Management: how the organization identifies, assesses, and manages climate-related risks</p>	
Describe the organization’s processes for identifying and assessing climate-related risks.	The registrant’s processes for identifying, assessing, and managing climate-related risks and whether any such processes are integrated into the registrant’s overall risk management system or processes.
Describe the organization’s processes for managing climate-related risks.	See above.
Describe how processes for identifying, assessing, and managing climate-related risks are integrated into the organization’s overall risk management.	See above.
<p>Metrics and Targets: metrics and targets used to assess and manage relevant climate-related risks and opportunities where such information is material</p>	
Disclose the metrics used by the organization to assess climate-related risks and opportunities in line with its strategy and risk management process.	If a registrant uses an internal carbon price, information about the price and how it is set;
Disclose Scope 1, Scope 2 and, if appropriate, Scope 3 greenhouse gas (GHG) emissions and the related risks.	<p>The registrant’s direct GHG emissions (Scope 1) and indirect GHG emissions from purchased electricity and other forms of energy (Scope 2), separately disclosed, expressed both by disaggregated constituent greenhouse gases and in the aggregate, and in absolute terms, not including offsets, and in terms of intensity (per unit of economic value or production);</p> <p>Indirect emissions from upstream and downstream activities in a registrant’s value chain (Scope 3), if</p>

	<p>material, or if the registrant has set a GHG emissions target or goal that includes Scope 3 emissions, in absolute terms, not including offsets, and in terms of intensity.</p>
<p>Describe the targets used by the organization to manage climate-related risks and opportunities and performance against targets.</p>	<p>If the registrant has publicly set climate-related targets or goals, information about:</p> <ul style="list-style-type: none"> • The scope of activities and emissions included in the target, the defined time horizon by which the target is intended to be achieved, and any interim targets; • How the registrant intends to meet its climate-related targets or goals; • Relevant data to indicate whether the registrant is making progress toward meeting the target or goal and how such progress has been achieved, with updates each fiscal year.

The Proposed Rule also includes disclosure related to the impact of climate-related events (severe weather events and other natural conditions) and transition activities on **the line items of a registrant’s consolidated financial statements, as well as the financial estimates and assumptions used in the financial statements.** Given the explosive growth of the voluntary carbon markets (as well as recent developments at COP 26 related to Article 6), the Proposed Rule makes specific mention of the use of renewable energy certificates (RECs) and carbon offsets and how these are being used by the registrant to meet its climate targets.

Where to disclose

The Proposed Rule requires disclosure of climate-related information in a registrant’s registration statements, Exchange Act annual reports in a separate, appropriately captioned section. Climate-related financial statement metrics and related disclosure **shall be disclosed in a note to the registrant’s consolidated financial statements.** Importantly, the Proposed Rule requires verification of Scope 1 and 2 emissions by an independent third party for certain categories of registrants.

Next steps for proposed rule

The Proposed Rule is over 500 pages and can be accessed via the [SEC’s website](#). The comment period on the Proposed Rule will remain open for “30 days after publication in the Federal Register, or 60 days after the date of issuance and publication on sec.gov, whichever period is longer”.

The SEC approved the Proposed Rule in a 3-1 vote with the only Republican-appointed commissioner voting against the Proposed Rule. Commissioner Peirce in her dissent stated that the existing rules already cover material climate risks. Republican governors and some business groups could see legal challenges, citing an overstep by the SEC on its jurisdiction. The former SEC Chair Jay Clayton is also on the public record as stating that **“setting climate policy is the job of lawmakers, not the SEC”**.¹ Despite the pushback, SEC Chair Gary Gensler maintains that the SEC has a role to bring standardization, consistency and comparability to climate-related disclosure. It appears the SEC is responding to the increasing demand by investors to provide much needed guidance on **climate-related information, which increasingly affects a company’s bottom line**. The Governance & Accountability Institute reported that 65 per cent of Russell 1000 companies published sustainability reports in 2019. However only a handful would be considered investor-grade material. With over 2000 companies already making TCFD-aligned disclosure and asset managers such as Black Rock and [State Street](#) requiring it of their portfolio companies, it may be that the ship has already sailed.

Update on CSA National Instrument

As outlined [in our previous article](#), the CSA released its proposed National Instrument Disclosure of Climate-related Matters (the Proposed Instrument) and companion policy for a 90-day comment period, which expired as Feb.17, 2022 but was extended by 30 days. The Proposed Instrument would introduce disclosure requirements regarding climate-related matters for reporting issuers other than investment funds. The Proposed Instrument closely aligns with the TCFD Recommendations, perhaps more so than the SEC’s Proposed Rule, with two major exceptions. First, issuers will not be required to disclose scenario analysis, including a 2°C or lower scenario. Secondly, issuers may disclose their greenhouse gas (GHG) emissions or explain why they have not done so. Regarding the disclosure of GHG emissions, part of the CSA’s consultation on the Proposed Instrument sought feedback on mandatory disclosure of Scope 1 GHG emissions. Under this alternative, disclosure of Scope 2 and Scope 3 GHG emissions would not be mandatory. Issuers would have to disclose their Scope 2 and 3 emissions on a comply or explain basis.

Conclusion

Climate change continues to be front and center for investors, governments and businesses. BLG’s Climate Change, ESG and Electricity Markets groups advise clients on all matters related to climate change and the new paradigm we now live. Our experts provide strategic, commercial and regulatory advice on climate disclosure, governance, risk and opportunity, as well as carbon management using carbon offsets or emissions allowances. BLG’s Disputes team comprises experts in climate-related litigation, helping clients proactively defend against potential claims and manage claims if they arise. Please reach out to any of the contacts below for further information or advice.

¹ <https://www.wsj.com/articles/the-secs-climate-change-overreach-global-warming-risks-lawmakers-invertors-market-data-11647801469>

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