

U.S. ESG Trends and the Canadian Election

Implications for ESG in Canada



What we're going to talk about

- “America First”
- DEI – what does “invidious” mean?
- Climate-Related Disclosure – in U.S. – apparently “deeply flawed”
- Climate-Related Disclosure – the Canadian “Pause” – not a pause
- Impact of Canadian election – Sustainable Finance, Climate-Related Disclosure, and Job Security

U.S. – “America First” - withdraws from:

Paris Climate
Agreement

World Health
Organization

United Nations
Human Rights
Council

United Nations
Relief and Works
Agency for
Palestine
Refugees in the
Near East

- Leaves some organizations short of funds
- Leaves leadership opportunities for others

Diversity, Equity, Inclusion (“DEI”)

- Suite of Executive Orders overturning diversity, equity and inclusion programs in U.S. federal government
- Require government agencies to investigate diversity programs at publicly traded corporations, non-profits, colleges and foundations to discourage this work outside government
- Executive Orders targeting law firms and their clients including their diversity, equity and inclusion programs
- Externally-facing disclosure around DEI programs scaled back across multiple industries
- Pronoun use scaled back

Diversity, Equity, Inclusion – regulatory bodies

- U.S. Federal Communications Commission (FCC) announced an investigation into a large US media company
- “Possibly promoting invidious forms of DEI in a manner that does not comply with FCC regulations”
- “invidious forms of discrimination”
- What is “invidious”?
- “invidious” – unfairly discriminating, likely to incur resentment in others
- Risk for Canadian companies - Other regulators follow suit – FERC and FTC?

Public company diversity disclosure in Canada

- TSX Rules
- Securities law (non-venture issuers)
- Canada Business Corporations Act
- Governance best practice organizations – Canadian Coalition for Good Governance (CCGG)
- Governance ranking organizations – Globe & Mail Board Games
- Proxy advisory firms, ISS, Glass Lewis
- Canadian companies operating in the United States will need to carefully consider their legal and stakeholder requirements for DEI disclosure in light of operating and political imperatives required of their US regulators and stakeholders
- More disclosure no longer better

Dentons Canada proxy circular survey

April 2025 re diversity disclosure

- Proxy Circular Disclosure by 17 large Canadian public companies 2024 vs. 2025
- Primarily in Energy Infrastructure Space
- All with significant operations/assets in the U.S.
- Conclusions:
 - In 2025 fewer references to diversity matters beyond mandatory disclosures
 - In 2025 typically just mandatory disclosures

Public company diversity disclosure in Canada

- One large Canadian Bank CEO commented on commitment to inclusive workplace, attracting diverse talent reflecting markets and communities, but recognizing sensitivities around DEI programs
- The Government of Canada announced (February 14, 2025) it will compel Canadian banks to make diversity disclosure regarding their boards of directors and senior management on women, visible minorities, indigenous peoples and the disabled
- The Canadian Securities Administrators (April 23, 2025) has paused work on its April 2023 proposal for amendments to public disclosure requirements pertaining to diversity and board renewal
- To support Canadian markets and issuers as they adapt to the recent developments in the U.S. and globally

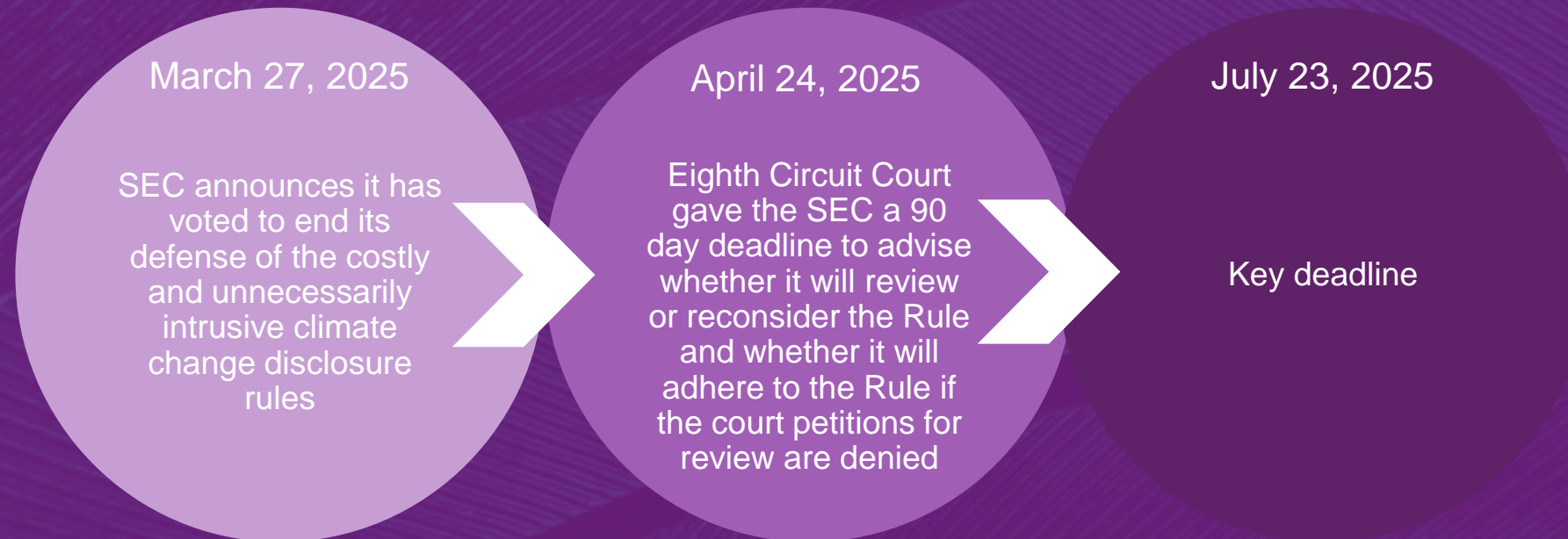
Proxy advisory services - ISS and Glass Lewis

- Extraordinary in proxy season policy adjustments
- ISS – February 11, 2025 – Announced it will no longer consider gender, racial or ethnicity of members of a US public company board when making voting recommendations on board elections
- Glass Lewis – March 2025 – Announced it will provide recommendations with and without consideration of gender and underrepresented communities representation for voting recommendations on US public company boards
- Recognizes their clients and companies challenged with DEI-related board composition matters
- State Street, Vanguard, Blackrock all voting without regard to diversity criteria
- Long-term impact on Canadian boards

U.S. federal climate-related disclosure – a real pause

- SEC's March 2024 Climate-Related Disclosure Rule
- Immediate litigation and SEC stays effectiveness pending completion of litigation
- February 11, 2025, Acting Chairman of the SEC –
 - “The Rule is deeply flawed and could inflict significant harm on the capital markets and our economy”
 - “I continue to question the statutory authority of the SEC to adopt the Rule, the need for the Rule, and the evaluation of costs and benefits. I also question whether the agency followed the proper procedures under the *Administrative Procedure Act* to adopt the Rule”

U.S. climate-related disclosure



U.S. state climate-related disclosure requirements

- California October 2023 Planned
- New York February 2025 Proposal
- Carbon emissions disclosure (revenues exceeding US\$ 1 billion)
- Climate-risk disclosure (revenues exceeding US\$ 500 million)

Executive order – protecting american energy from state overreach April 8, 2025

- Energy dominance through “the removal of illegitimate impediments to the identification, development, siting, production, investment in, or use of domestic energy resources – particularly oil, natural gas, coal, hydropower, geothermal, biofuel, critical mineral, and nuclear energy resources”
- Attorney General to identify all State and local laws, regulations, causes of action, policies and practices (collectively, “State Laws”) burdening these items
- Prioritize the identification of State Laws purporting to address “climate change” or involving “environmental, social, and governance” initiatives, “environmental justice”, carbon or “greenhouse gas” emissions and funds to collect carbon “penalties” or carbon taxes – including cap and trade systems and other carbon trading systems
- Includes lawsuits for purported past contributions to greenhouse gas emissions

Canadian climate-related disclosure

- Canadian Securities Administrators (CSA) **Proposal** – October 2021
- OSFI – Guideline B-15 – federally regulated domestic systemically-important banks and internationally active insurance groups headquartered in Canada
 - Climate-related risks and opportunities governance, strategy, risk management, scenario analysis, scope 1, 2 and 3 absolute emissions for 2024 financial year (scope 3 2028 – includes financed emissions)
 - ISSB/CSSB-based disclosure
- ISSB Standards – S1 and S2 (June 2023) (**not mandatory**)
- Federal government announces intention to amend CBCA to require public-company-like disclosure by large private companies (October 2024)
- CSSB Standards – CSDS 1 and CSDS 2 (December 18, 2024) (**not mandatory**)
- CSA pause (April 2025) – soft regulation

U.S. Office of the Comptroller of the Currency

- Withdraws Principles for Climate-Related Financial Risk Management for Large Financial Institutions
- “Principles overly burdensome and duplicative”
- “The OCC’s existing guidance for banks to maintain a sound risk management framework applies to all activities conducted by supervised institutions and includes potential exposures to severe weather events or natural disasters”

Canada: OSFI Guideline B-15: Climate risk management

- Introduced March 7, 2023 and updated most recently on February 20, 2025
- Governance and Risk Management Expectations – physical risks and transition risks
- Climate-Related Financial Disclosures – disclosures aligned with ISSB/CSSB standards

Net-zero banking alliance

- Convened by the UN Environment Programme Finance Initiative as part of Glasgow Financial Alliance for Net Zero (GFANZ)
- Group of Banks committed to aligning their lending and investment portfolios with net-zero emissions by 2050
- Prime Minister Carney was Co-Chair of GFANZ and also UN Special Envoy for Climate Action
- December 31, 2024 – All large Canadian banks members
- Through January 2025 all large US Bank members left the NZBA
- January 2025 all the large Canadian Bank members left the NZBA
- Statements from Banks generally noted a continued commitment to reducing emissions and they could continue their climate work without the Alliance

Liberal Party of Canada election platform 2025

- Issue Canada's first-ever transition bonds by 2027, to finance projects that help industrial and agricultural sectors get cleaner and more competitive
- The federal government will issue at least \$10 billion per year through new bonds [transition bonds]
- Establish broad coverage of climate risk disclosure for companies across Canada. We will prioritize working with provincial, territorial, and international partners to enhance transparency for investors, better assess climate risks and opportunities, enable the development of transition plans, and help align capital towards a sustainable economy
- Carbon removal targets for Canada for 2035 and 2040 – continuation of country targets or an acceleration? (Note Canada's NDC is 45-50% reduction from 2005 by 2035)
- Every measure in the Liberal platform will be implemented with a full Gender Based Analysis
- Green and transition focused industrial policy

Scenario analysis

What could all this look like?

Sustainable Finance

Climate-Related
Disclosure

Starting context

- OSFI Guideline B-15
- October 9, 2024 the federal government announced its intention to amend the CBCA to require climate-related financial disclosures for large, federally incorporated private companies
- October 9, 2024 the federal government announced a plan to deliver voluntary made-in-Canada sustainable investment guidelines that would assist to identify “green” and “transition” economic activities
- Prime Minister Carney most recently (September 9, 2024) was Chair of the Liberal Party Leaders Task Force on Economic Growth
- Prime Minister Carney chaired the G20’s Financial Stability Board when it launched the TCFD in 2015
- Prime Minister Carney was Co-Chair of the Glasgow Financial Alliance for Net Zero that established NZBA
- Prime Minister Carney was the Head of Transition Investing at Brookfield Corporation
- Bank of Canada Governor Tiff Macklem (2019) was Chair of the Expert Panel on Sustainable Finance formed to make recommendations on the development of a sustainable finance framework in Canada

Sustainable finance

- Platform - Issue Canada's first-ever transition bonds by 2027, to finance projects that help industrial and agricultural sectors get cleaner and more competitive
- Expert Panel on Sustainable Finance – recommends the establishment of a global standard for transition financing
- In September 2022 the Sustainable Finance Action Council (SFAC) published the Taxonomy Roadmap Report which proposes a voluntary taxonomy to benchmark and standardize economic activities to align with Canada's climate commitments
- October 9, 2024 the federal government announced a plan to deliver voluntary made-in-Canada sustainable investment guidelines that would assist to identify “green” and “transition” economic activities
- “Green” activities would be low or zero emitting activities that do not have material scope 1 and 2 emissions, low or zero downstream scope 3 emissions and sell into or benefit from markets that are expected to grow in the global net-zero transition
- “Transition” activities would be decarbonizing activities that have material scope 1 and 2 emissions, that do not face immediate demand-side risk and do not create carbon lock-in and path dependency

Climate-related disclosure

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- Climate-Aligned Finance Act (Bill S-243)
 - Climate/transition disclosures by a broad group of federal financial institutions, CBCA companies, “federal works, undertakings or businesses”
 - Creation of policy to incentivise financial products that support climate commitments and disincentivizing those that are inconsistent with climate commitments
 - Changing governance to allow/require boards to exercise their powers in a way that aligns actions with climate commitments

Questions?

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